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L A W S
OF THE *H. M. Cramer*
STATE OF NEW-YORK,

REVISED AND PASSED

AT THE

THIRTY-SIXTH SESSION

OF THE

LEGISLATURE,

WITH MARGINAL NOTES AND REFERENCES,

FURNISHED BY THE REVISORS,

WILLIAM P. VAN NESS & JOHN WOODWORTH, ESQUIRES,

Pursuant to the Act, entitled "An Act for Publishing the Laws of this State," passed April 13th, 1813.



[PUBLISHED BY AUTHORITY.]

IN TWO VOLUMES.—VOL. I.

ALBANY:

PRINTED AND PUBLISHED BY H. C. SOUTHWICK & Co.

No. 94, State Street.

1813.

STATE OF NEW-YORK, }
SECRETARY'S OFFICE. }

I DO hereby Certify, that **HENRY C. SOUTHWICK** is duly authorized and appointed to print and publish the Laws of the State of New-York, in pursuance of an Act of the Legislature of the said State, entitled "An Act for publishing the Laws of this State," passed April 13, 1813, and that according to the said act, the laws so printed and published, shall be evidence in all Courts of Justice whatsoever."

(L.S.)

Given under my hand and seal of office, this fourth day of September, 1813.

JACOB RUTSEN VAN RENSSELAER, Secretary:

BY DANIEL D. TOMPKINS, Governor of the State of New-York—It is hereby Certified, that Jacob Rutzen Van Rensselaer is Secretary of the State of New-York, and that full faith and credit are due to his acts in that capacity.

(L.S.)

In testimony whereof, I have hereunto subscribed my name, and affixed the privy seal of the said State, at the City of Albany, the fourth day of September, 1813.

DANIEL D. TOMPKINS.

YANKEE DO DOLL

District of New-York, ss:

BE it remembered, that on the seventeenth day of May, in the thirty-seventh year of the Independence of the United States of America, **H. C. SOUTHWICK & Co.** of the said District, have deposited in this office the title of a Book, the right whereof they claim as proprietors, in the words following, to wit:

"**LAWS OF THE STATE OF NEW-YORK**, revised and passed at the thirty-sixth session of the Legislature, with marginal notes and references, furnished by the revisors, **William P. Van Ness** and **John Woodworth**, Esquires, pursuant to the act, entitled "an act for publishing the laws of this state," passed April 13th, 1813."

In conformity to the act of the Congress of the United States, entitled "An act for the encouragement of Learning, by securing the copies of Maps, Charts and Books to the authors and proprietors of such copies, during the time therein mentioned." And also to an act, entitled "An act for the encouragement of Learning, by securing the copies of Maps, Charts and Books to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints."

THERON RUDD, Clerk
of the District of New-York.

154141

INTRODUCTION.

THE REVISORS, having executed the trust reposed in them by the Legislature, present to the public *the Laws of the State of New-York*, in two volumes. They have excluded from this edition all private and local acts, except such of the latter as were deemed of sufficient general importance to merit publication. The *titles* of certain acts of *Incorporation* and of certain other acts, which were submitted by the Revisors in their report to the Legislature at the last session, together with the *titles* of the acts of *Incorporation*, &c. of that session, have been inserted in this edition:

TO MOST of the laws, it will be perceived have been added *marginal notes and references*, accompanied in some instances with a succinct view or history of the origin and progress of the law under our *Colonial*, and present *State*, government. These notes, &c. it is proper to observe, were collected and digested by JOHN V. N. YATES, Esquire, who was requested to perform that service. Although errors of the press and other errors have doubtless escaped all our vigilance and care, yet it is believed the work will be found generally correct, and to gentlemen of the bar essentially useful.

THE Revisors have here added *explanatory notes* in order to enable the reader correctly to understand the *references*, &c. in this work.

EXPLANATORY NOTES.

Bradford's Edition of the colonial laws, in *one* volume, published in 1710, containing the laws from 1691 to 1709, inclusive; and also, certain *ordinances* of the Governor and Council, and a *Journal* of the General Assembly, from 1702 to 1709. This edition of the colonial laws is supposed to be the earliest extant. *Bradford* (who was printer to the colony) published also an Edition in 1726, including the laws from 1691 to 1725, inclusive; but the Edition of 1710, is the one referred to in this work.

Ed. ed. refers to.....

Bradford's Edition.

INTRODUCTION.

- iv. S.&L. refers to.....
Smith & Livingston - { The edition of the colonial laws collected, revised, and published (by direction of the General Assembly) by *William Smith, junior and William Livingston, Esquires*, in 1762. The laws in force, from 1691 to 1762, are included in this edition, which consists of two volumes.
- v. V.S. refers to.....
Van Schaack - { The edition (likewise revised and collected by direction of the General Assembly) published by *Peter Van Schaack, Esquire*, in 1774, consisting of two volumes, and containing the colonial laws from 1691 to 1773, inclusive.
2. J. & V. refers to.....
Jones & Varick - { The edition of the laws of the State of New-York, revised and collected by direction of the legislature, and published in 1789, by *Samuel Jones and Richard Varick, Esquires*, consisting of two volumes, and containing the laws of the State from the adoption of the Constitution in 1777 to 1789, inclusive—also, containing in an appendix, certain colonial laws.
3. Gr. refers to.....
Greenleaf { The edition, in three volumes, published by *Mr. Thomas Greenleaf*, containing the laws of the State from 1777 to 1797, inclusive, (8 years later than the edition of Jones and Varick.) This edition, though not published under the direction of the Legislature, became a necessary subject of reference for acts from 1789 to 1797. The last publication of Greenleaf's edition was in 1798.
- Lor. And. refers to
Loring Andrews - { The laws from 1798, inclusive, to 1801, inclusive, published by *Mr. Loring Andrews*, then state printer. These are generally referred to by the *Sessions* in which they were passed and their *chapters*.
2. K. & R. refers to.....
Kent & Radcliff { The edition in two volumes, which was revised by direction of the Legislature, by *Mr. Chief Justice Kent and Mr. (then) Justice Radcliff*, in 1801, and published in 1802, containing all the laws of the State then in force. This edition has been commonly referred to in the reports, &c. as the *revised laws*, or *R. L.* and, with their subsequent alterations and amendments, were in force immediately preceding this revision.
4. W. refers to.....
Webster - { The edition published by *Messrs. Charles R. and George Webster*, being a continuation of the laws revised by *Ch. Jus. Kent and J. Radcliff*, from 1802, to 1812, inclusive, in four volumes, designated as volume 3, 4, 5 and 6.—Vol. 3, containing the laws from 1802 to 1804—vol. 4, from 1804 [the extra session in November] to 1806, inclusive—vol. 5, from 1807 to 1809, inclusive—and vol. 6, from 1810 to 1812, inclusive.—This Edition was not published by direction of the Legislature.

B. refers to..... } The laws of 1802, published by *Mr. John Barber*,
Barber - then State-printer.

B. refers to..... } The laws of 1813, published by *Solomon Southwick*,
Southwick - Esquire, the present state printer.

CARE has been taken (with but few exceptions) to insert in the margin of each section notes indicating where the corresponding section (if any) in the revised laws of K.&R. or in their continuation by W. and S. can be found. This has only been omitted when the *whole* act in those editions has been adopted in the present. Hence, with little difficulty, the references to the statutes by *Caines* and *Johnson* in their Reports, &c. can be ascertained, and their usefulness thus preserved.

SMITH'S *History of New-York* (London edition of 1757) and *Catquehoun's Police of London* (Philadelphia edition of 1798) have, in a few instances, been referred to under *Smith's Hist. N. Y.* and *Colq. Pol. Legid.*. These works are considered as authority, and of deserved celebrity and utility.

THE references to *Caines'* and *Johnson's Reports* and Cases, &c. to the *English and British acts of Parliament*, and occasionally to *English and American Reporters*, &c. being in the usually abridged form, will be readily understood by the profession for whose use they are principally intended.

THE *colonial* acts of the Legislature of 1683, have also been the subject of reference in this work. These acts are not to be found in any edition extant. Indeed, but few of them are preserved in the Secretary's office, to which resort has been had. The Revisors have supposed the publication of a few of the most important and leading statutes of that year (being the *era of Legislation* in this, then, Colony—the *first Colonial Assembly* having met in 1683) would neither prove uninteresting or useless to the reader. These, together with certain important *ordinances* of the Governor and Council of the Colony, and the *articles of capitulation* in 1664, (confirmed by *treaty* in 1673-4) by which the *Dutch* surrendered this Colony to the *English*, and thereby enabled them, with a short interruption only, to *legislate* over it, till our separation from Great-Britain, have been published in this work.

WILLIAM P. VAN NESS.
 JOHN WOODWORTH.

December 1, 1813.

NOTE, BY THE PUBLISHERS.

The following *references*, and their *explanations*, are given to the reader by way of example :

REFERENCES.	EXPLANATIONS.
Br. ed. 79..... {	<i>Bradford's edition</i> , page 79.
S.&L. v. 1. 29..... {	<i>Smith and Livingston's edition</i> , volume 1, page 29,
ibid. v. 2. 310..... {	volume 2, page 310.
Gr. v. 1. 12..... {	<i>Greenleaf's edition</i> , volume 1, page 12—volume 2,
ibid. v. 2. 96..... {	page 96—volume 3, page 112.
ibid. v. 3. 112..... {	
Sec. 32. c. 198. § 2 {	<i>Session 32, chapter 198, section 2, &c. &c.</i>

The above, it is presumed, will be sufficient to enable the reader, in every case, to ascertain the *edition*, *volume*, *page*, *session*, *chapter*, &c. referred to in this work.

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Articles of Confederation,

AND

PERPETUAL UNION,

Between the States of *New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia,*

Articles of Confederation

Proposed by the Congress of the United States on the 17th November, 1777, and approved by this State by law passed February 6, 1778.

ARTICLE I.

THE style of this confederacy shall be, "THE UNITED STATES OF AMERICA."

Style of Confederacy.

ART. II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

Powers not delegated, retained by each state.

ART. III. The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

League offensive and defensive.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this union, the free inhabitants of each of these States (paupers, vagabonds and fugitives from justice excepted) shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any State to any other state, of which the owner is an inhabitant: *Provided also*, That no imposition, duties or restriction, shall be laid by any State on the property of the United States, or either of them.

Freedom of Intercourse.

Ingress and regress, and equal freedom of trade.

If any person guilty of or charged with treason, felony, or other high misdemeanor, in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor, or executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offence.

Fugitives from justice to be delivered up.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State. X

Reciprocal faith and credit to public acts.

ART. V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

An annual congress.

No state to be represented by less than two, or more than seven members.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each state shall maintain its own delegates.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

And have one vote.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debates.

Freedom of speech, and debate in Congress, shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Protection from arrest and imprisonment.

No state to send or receive embassies without consent of United States.

ART. VI. No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states to make treaties with each other without consent of United States.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

Nor lay duties interfering with treaties.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any King, Prince or State, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

Nor maintain in time of peace, ships of war or land forces.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide, and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

Every state to keep a well regulated militia and public stores of arms and other munitions of war.

No state to make war without consent of United States, except for immediate defence.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the Uni-

ted States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Not grant commissions to ships till after war declared.

ART. VII. When land forces are raised by any State, for the common defence, all officers of or under the rank of Colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

Officers in land forces under rank of Colonel, to be appointed by each state.

ART. VIII. All charges of war and all other expenses that shall be incurred for the common defence, or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land, and the buildings and improvements thereon, shall be estimated, according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

How charges of war and other expenses of the United States shall be defrayed.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

ART. IX. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, *provided*, that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures: *Provided*, that no member of Congress shall be appointed a judge of any of the said courts.

Congress to have the power of war and peace, sending and receiving ambassadors, making treaties, establishing rules for captures; granting letters of marque and reprisal.

Appointing Courts for trying Piracies, Felonies on the sea, and for determining appeals on captures.]

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more States, concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following:—

Congress to be the last resort on appeal between two or more states

Mode of conducting the same.

Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without shewing reasons which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: *Provided*, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" *Provided also*, That no State shall be deprived of territory for the benefit of the United States.

As also other controversies concerning private right of soil, claimed by grants of different states.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands and the States which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The power of regulating the alloy and value of coin, fixing weights and measures, regulating trade and Indian affairs.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States—regulating the trade and managing all af-

with the *Indians*, not members of any of the States: *Provided*, that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another throughout the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

Regulating Post-Offices, appointing officers in land forces, except regimental, and all naval officers, and commissioning all officers and making rules for their regulation.

The United States in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated, "*A Committee of the States*," and to consist of one delegate from each State; and to appoint such other committees and civil officers, as may be necessary, for managing the general affairs of the United States under their direction—to appoint one of their number to preside, *provided* that no person be allowed to serve in the office of President, more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States, an account of the sums of money so borrowed or emitted—to build and equip a Navy—to agree upon the number of land Forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisitions shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men, so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped, in the same manner as the quota of such State, unless the legislature of such State shall judge, that such extra number cannot be safely spared out of the same; in which case, they shall raise, officer, clothe, arm and equip, as many of such extra number, as they judge can be safely spared; and the officers and men, so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

Congress to appoint a committee of the states.

Civil officers.

A president.

To ascertain the sums of money, to be raised.

To borrow money, or emit bills. To build a navy. To agree upon the number of land forces. To make requisitions.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal, in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States,

Congress not to declare war, &c. but with consent of nine states.

Questions in Congress to be determined by a majority of voices.

Power of adjournment.

To publish their proceedings.

Committee of States, or any nine of them, in recess of Congress, to execute power.

Canada may be admitted into the Union.

Debts contracted to be a charge on the United States.

States to abide by order of Congress, and the Union to be perpetual.

or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea Forces to be raised, nor appoint a Commander in Chief of the Army or Navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to Treaties, Alliances or Military Operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the Journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

ART. X. The Committee of the States, or any nine of them, shall be authorised to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

ART. XI. Canada acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other Colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII. All Bills of Credit emitted, Monies borrowed and Debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States; for payment and satisfaction whereof, the said United States, and the public faith, are hereby solemnly pledged.

ART. XIII. Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

These Articles shall be proposed to the Legislatures of all the United States, to be considered, and if approved by them, they are advised to authorise their Delegates to ratify the same in the Congress of the United States; which being done, the same shall become conclusive.

By Order of Congress,

HENRY LAURENS, PRESIDENT.

THE
CONSTITUTION
OF THE
United States of America,
WITH THE
AMENDMENTS THERETO.

CONSTITUTION.

WE, the People of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, DO ORDAIN AND ESTABLISH this CONSTITUTION for the UNITED STATES OF AMERICA.

ARTICLE I.

SEC. 1. ALL legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. Of the Legislative Power.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. Of the House of Representatives.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to chuse three; Massachusetts, eight; Rhode-Island and Providence Plantations, one; Connecticut, five; New-York, six;

THE CONSTITUTION OF

New-Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North-Carolina, five; South-Carolina, five; and Georgia, three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall chuse their speaker and other officers, and shall have the sole power of impeachment.

Of the Senate.

SEC. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall chuse their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

Member of
electing Man-
ners.

SEC. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: But the congress may at any time by law make or alter such regulations, except as to the places of chusing senators.

Congress to
assemble an-
nually.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Powers of
each house.

SEC. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation, privileges and immunities of the Members

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Manner of passing bills, etc.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States: If he approve he shall sign it; but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered, and, if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Powers of
Congress.

Sec. 8. The congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the supreme court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions:

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Limitations of
the powers of
Congress.

Sec. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended,

unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another : Nor shall vessels, bound to or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States : and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince or foreign state.

Sec. 10. No state shall enter into any treaty, alliance or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a tender in payment of debts ; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

Limitations of the powers of the individual states.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and controul of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Sec. 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows :

The executive power to be vested in a President.

Each state shall appoint in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress ; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Manner of electing the President and V. President.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall

make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse by ballot one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, chuse the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the Senate shall chuse from them by ballot, the vice-president:

The congress may determine the time of chusing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Who may be
elected President.

No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the
removal, &c.
of the President,
his powers to devolve
on the Vice-
President, &c.

In case of the removal of the president from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed or a president shall be elected.

President's
compensation.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office he shall take the following oath or affirmation:

His oath.

"I do solemnly swear, (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

Powers and
duties of the
President.

SEC. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the se-

veral states when called into the actual service of the United States; he may require the opinion in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Sec. 3. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration, such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery or other high crimes and misdemeanors.

How the President and all civil officers may be removed from office.

ARTICLE III.

Sec. 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Of the judicial power.

Concerning the judges.

Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states; between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Extent of the judicial power.

Of the original and appellate jurisdiction of the supreme court.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

Of trials for crimes.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places, as the congress may by law have directed.

Of treason.

SEC. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason: but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

ARTICLE IV.

Faith to be given to public acts, &c. of each state.

SEC. 1. Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Privileges of citizens to extend through all the states.

SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives from justice to be delivered up.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Persons held to service or labor to be delivered up.

No person held to service or labour in one state; under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

New states may be admitted.

SEC. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Disposal of territory and other property of the United States.

The congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

Guarantee and protection of the states by the union.

SEC. 4. The United States shall guarantee to every state in this Union, a republican form of government; and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Of amendments to the constitution.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Former debts and engagements to remain valid.

This constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state, shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

This constitution, the laws and treaties of the United States to be the supreme law of the land.

The senators and representatives before mentioned and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Oath to support the constitution.

There shall be no religious test.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

When this Constitution shall take effect.

Done in Convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President,*
and *Deputy from Virginia.*

DELAWARE.

George Reed,
Gunning Bedford, junior.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James M'Henry
Daniel of St. Thomas Jenifer.
Daniel Carrol.

VIRGINIA.

John Blair,
James Madison, Junior.

NEW-HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

NEW-YORK.

Alexander Hamilton.

NEW-JERSEY.

William Livingston.

THE CONSTITUTION OF

David Brearley,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

Attest,

NORTH-CAROLINA,
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH-CAROLINA.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

WILLIAM JACKSON, *Secretary.*



IN CONVENTION, Monday, September 17, 1787.

PRESENT,

The States of NEW-HAMPSHIRE, MASSACHUSETTS, CONNECTICUT,
MR. HAMILTON from NEW-YORK, NEW-JERSEY, PENNSYLVANIA,
DELAWARE, MARYLAND, VIRGINIA, NORTH-CAROLINA, SOUTH-
CAROLINA, and GEORGIA :

RESOLVED,

THAT the preceding constitution be laid before the United States in Congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in congress assembled.

Resolved, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such publication, the electors should be appointed, and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed and directed, as the constitution requires, to the secretary of the United States in congress assembled. That the senators and representatives should convene at the time and place assigned. That the senators should appoint a president of the senate, for the sole purpose of receiving, opening and counting the votes for president; and, that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution.

By the unanimous order of the convention,

GEORGE WASHINGTON, President.

WILLIAM JACKSON, Secretary.

IN CONVENTION, September 17, 1787.

SIR,

WE have now the honor to submit to the consideration of the United States in congress assembled, that constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired, that the power of making war, peace and treaties; that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union: But the impropriety of delegating such extensive trust to one body of men is evident; hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty, to each, and yet provide for the interest and safety of all: Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion, this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every state, is not perhaps to be expected; but each will doubtless consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, we have the honor to be, Sir,

Your excellency's most obedient

And humble servants,

GEORGE WASHINGTON, President.

By unanimous order of the convention.

His Excellency the PRESIDENT of CONGRESS.

THE CONSTITUTION OF AMENDMENTS.

ARTICLE THE FIRST.

Free exercise
of Religion.

Freedom of
Press.

Right of peti-
tion.

CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE THE SECOND.

Right to bear
arms.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE THE THIRD.

No soldier to
be quartered,
except, &c.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE THE FOURTH.

Unreasonable
searches pro-
hibited.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE THE FIFTH.

Proceeding in
certain criminal
cases.

Property se-
ized.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE THE SIXTH.

Mode of trial
in criminal
cases:

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE THE SEVENTH.

In civil cases.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury, shall be otherwise re-exam-

in any court of the United States than according to the rules of the common law.

ARTICLE THE EIGHTH.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Concerning bail, fines and punishments.

ARTICLE THE NINTH.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people. Rights not enumerated.

ARTICLE THE TENTH.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people. Powers reserved to the people.

ARTICLE THE ELEVENTH.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. Limitation of the judicial power.

FURTHER AMENDMENT,

Relative to the Election of PRESIDENT and VICE-PRESIDENT.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states, shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March

next following, then the vice-president shall act as president, as in case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president.

THE

CONSTITUTION

OF THE

State of New-York.

*In Convention of the Representatives of the State of
New-York.*

KINGSTON, 20th April, 1777.

WHEREAS the many tyrannical and oppressive usurpations of the king and parliament of Great-Britain, on the rights and liberties of the people of the American colonies, had reduced them to the necessity of introducing a government by congresses and committees, as temporary expedients, and to exist no longer than the grievances of the people should remain without redress.

Government
by Congress
and Commit-
tees.

AND WHEREAS the congress of the colony of New-York, did, on the thirty-first day of May, now last past, resolve as follows,
viz.

"WHEREAS the present government of this colony, by congress and committees, was instituted while the former government, under the crown of Great-Britain, existed in full force;—and was established for the sole purpose of opposing the usurpation of the British parliament, and was intended to expire on a reconciliation with Great-Britain, which it was then apprehended would soon take place, but is now considered as remote and uncertain.

Its object
temporary.

"AND WHEREAS many and great inconveniences attend the said mode of government by congress and committees, as of necessity, in many instances, legislative, judicial and executive powers have been vested therein, especially since the dissolution of the former government, by the abdication of the late governor, and the exclusion of this colony from the protection of the king of Great-Britain.

Its inconven-
iences.

"AND WHEREAS the continental congress did resolve as followeth to wit:

"WHEREAS his Britannic majesty, in conjunction with the lords and commons of Great-Britain, has, by a late act of parliament, excluded the inhabitants of these united colonies from the protection of his crown. And whereas, no answers whatever, to the humble petition of the colonies for redress of grievances and reconciliation with Great-Britain, has been, or is likely to be given, but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies. And whereas it appears

Recital, and

THE CONSTITUTION OF

“ absolutely irreconcilable to reason and good conscience, for
 “ the people of these colonies, now to take the oaths and affir-
 “ mations necessary for the support of any government under the
 “ crown of Great-Britain, and it is necessary that the exercise of
 “ every kind of authority under the said crown, should be totally
 “ suppressed, and all the powers of government exerted under
 “ the authority of the people of the colonies, for the preservation
 “ of internal peace, virtue and good order, as well as for the de-
 “ fence of our lives, liberties, and properties, against the hostile
 “ invasions and cruel depredations of our enemies :

Therefore,

**Resolution of
the General
Congress, re-
commending
the institution
of new go-
vernments.**

“ **RESOLVED**, That it be recommended to the respective as-
 “ semblies and conventions of the united colonies, where no go-
 “ vernment sufficient to the exigences of their affairs has been
 “ hitherto established, to adopt such government as shall, in the
 “ opinion of the representatives of the people, best conduce to
 “ the happiness and safety of their constituents in particular, and
 “ America in general.”

**Power of the
Provincial
Congress in-
adequate.**

“ **AND WHEREAS** doubts have arisen, whether this congress
 are invested with sufficient power and authority to deliberate and
 determine on so important a subject as the necessity of erecting
 and constituting a new form of government and internal police,
 to the exclusion of all foreign jurisdiction, dominion and control
 whatever. And whereas it appertains of right solely to the peo-
 ple of this colony to determine the said doubts: Therefore,

**Recommend-
ation to elect
deputies with
adequate pow-
ers :**

“ **RESOLVED**, That it be recommended to the electors in the
 several counties in this colony, by election in the manner and form
 prescribed for the election of the present congress, either to au-
 thorize (in addition to the powers vested in this congress) their
 present deputies, or others in the stead of their present deputies,
 or either of them, to take into consideration the necessity and
 propriety of instituting such new government as in and by the said
 resolution of the continental congress is described and recom-
 mended : And if the majority of the counties, by their deputies in
 provincial congress, shall be of opinion that such new government
 ought to be instituted and established, then to institute and estab-
 lish such a government as they shall deem best calculated to se-
 cure the rights, liberties, and happiness of the good people of this
 colony : and to continue in force until a future peace with Great-
 Britain shall render the same unnecessary. And,

**Time and
place of
meeting.**

“ **RESOLVED**, That the said elections in the several counties,
 ought to be had on such day, and at such place or places, as by the
 committee of each county respectively shall be determined. And
 it is recommended to the said committees, to fix such early days
 for the said elections, as that all the deputies to be elected have
 sufficient time to repair to the city of New-York by the second
 Monday in July next; on which day all the said deputies ought
 punctually to give their attendance.

“ **AND WHEREAS** the object of the foregoing resolutions is of
 the utmost importance to the good people of this colony ;

“ **RESOLVED**, That it be, and it is hereby earnestly recommend-
 ed to the committees, freeholders and other electors in the different
 counties in this colony, diligently to carry the same into exec-
 tion.”

AND WHEREAS the good people of the said colony, in pursuance of the said resolution, and reposing special trust and confidence in the members of this convention, have appointed, authorised, and empowered them for the purposes, and in the manner, and with the powers in and by the said resolve specified, declared and mentioned.

Appointment
of this Con-
vention.

AND WHEREAS the delegates of the United American States, in general congress convened, did on the fourth day of July now last past, solemnly publish and declare, in the words following, viz.

“ WHEN in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Proceedings
of the Confer-
al Congress.

“ We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are, life, liberty and the pursuit of happiness: That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed: That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence indeed will dictate, that governments long established should not be changed for light and transient causes, and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great-Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

Reasons
thereof.

“ He has refused his assent to laws, the most wholesome and necessary for the public good. Grievances.

“ He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

“ He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only.

“ He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records,

for the sole purpose of fatiguing them into compliance with his measures.

" He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

" He has refused for a long time, after such dissolutions, to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise ; the state remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

" He has endeavored to prevent the population of these states ; for that purpose obstructing the laws for naturalization of foreigners ; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

" He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

" He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

" He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

" He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

" He has affected to render the military independent of, and superior to, the civil power.

" He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws ; giving his assent to their acts of pretended legislation :

" For quartering large bodies of troops among us :

" For protecting them, by a mock trial, from punishment for any murders they should commit on the inhabitants of these states :

" For cutting off our trade with all parts of the world :

" For imposing taxes on us without our consent :

" For depriving us in many cases, of the benefits of trial by jury.

" For transporting us beyond seas, to be tried for pretended offences :

" For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies :

" For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments :

" For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

" He has abdicated government here, by declaring us out of his protection, and waging war against us.

" He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

" He is, at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy, scarce-

ly paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

"He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

"He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

"In every stage of these oppressions, we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

"Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connection and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must therefore acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war; in peace, friends.

"We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, That these united colonies are, and of right ought to be, **FREE AND INDEPENDENT STATES**; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great-Britain, is, and ought to be totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor."

Declaration
of
Independence.

AND WHEREAS this convention having taken this declaration into their most serious consideration, did on the ninth day of July last past, unanimously resolve, That the reasons assigned by the continental congress, for declaring the united colonies free and independent states, are cogent and conclusive: And that while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will at the risk of our lives and fortunes, join with the other colonies in supporting it.

Approved:

By virtue of which several acts, declarations and proceedings, mentioned and contained in the afore-recited resolves or resolu-

Power of the
Convention.

tions of the general congress of the United American States, and of the congresses or conventions of this state, all power whatever therein hath reverted to the people thereof, and this convention hath by their suffrages and free choice been appointed, and among other things authorised to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state, most conducive of the happiness and safety of their constituents in particular, and of America in general :

All authority
derived from
the people.

I. This convention, therefore, in the name and by the authority of the good people of this state, **DOTH ORDAIN, DETERMINE AND DECLARE**, That no authority shall, on any pretence whatever, be exercised over the people, or members of this state, but such as shall be derived from and granted by them.

Legislative
power.

II. This convention doth further, in the name and by the authority of the good people of this state, **ORDAIN, DETERMINE AND DECLARE**, That the supreme legislative power within this state, shall be vested in two separate and distinct bodies of men; the one to be called, the Assembly of the state of New-York; the other to be called, the Senate of the state of New-York: who, together shall form the Legislature, and meet once at least in every year for the dispatch of business.

Council of
Revision.

III. **AND WHEREAS** laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: **BE IT ORDAINED**, That the governor for the time being, the chancellor and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the Senate and Assembly, shall, before they become laws, be presented to the said council for their revisal and consideration; and if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate or house of assembly, in whichsoever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to re-consider the said bill. But if after such re-consideration, two thirds of the said senate, or house of assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be re-considered, and if approved by two thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays,

Bills to become laws if
not returned
in ten days.

Be it further ordained, That if any bill shall not be returned by the council, within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first

day of the meeting of the legislature, after the expiration of the said ten days.

IV. That the assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportions following, viz.

For the City and County of New-York,

The City and County of Albany,

The County of Dutchess,

The County of Westchester,

The County of Ulster,

The County of Suffolk,

The County of Queens,

The County of Orange,

The County of Kings,

The County of Richmond,

* The County of Tryon,

† The County of Charlotte,

‡ The County of Cumberland,

‡ The County of Gloucester,

Nine.

Ten.

Seven.

Six.

Six.

Five.

Four.

Four.

Two.

Two.

Six.

Four.

Three.

Two.

The Assembly.

Representation apportioned to each county.

Note: Representation increased to 113 Members of Assembly, and counties increased to 44.—Editors.

V. That as soon after the expiration of seven years, subsequent to the termination of the present war, as may be, a census of the electors and inhabitants in this state be taken, under the direction of the legislature. And if on such census it shall appear, that the number of representatives in assembly from the said counties is not justly proportioned to the number of electors in the said counties respectively, that the legislature do adjust and apportion the same by that rule. And further, that once in every seven years, after the taking of the said first census, a just account of the electors resident in each county shall be taken; and if it shall thereupon appear that the number of electors in any county, shall have increased or diminished one or more seventieth parts of the whole number of electors, which on the said first census shall be found in this state, the number of representatives for such county shall be increased or diminished accordingly, that is to say, one representative for every seventieth part as aforesaid.

Census, when and how to be taken.

VI. And whereas an opinion hath long prevailed among divers of the good people of this state, that voting at elections by ballot, would tend more to preserve the liberty and equal freedom of the people, than voting *viva voce*: To the end therefore, that a fair experiment be made, which of those two methods of voting is to be preferred:

Ballot, opinion of voting by.

Be it ordained, That as soon as may be, after the termination of the present war, between the United States of America and Great-Britain, an act or acts be passed by the legislature of this state, for causing all elections thereafter to be held in this state for senators and representatives in assembly, to be by ballot, and directing the manner in which the same shall be conducted. And whereas it is possible, that after all the care of the legislature, in framing the said act or acts, certain inconveniences and mischiefs, unforeseen at this day, may be found to attend the said mode of electing by ballot:

After the war experiment to be made:

It is further ordained, That if after a full and fair experiment

* Name afterwards altered to *Montgomery*.—† Name afterwards altered to *Washington*.—
‡ Ceded to Vermont.—Editors.

To be abolished if found inconvenient.

shall be made of voting by ballot aforesaid, the same shall be found less conducive to the safety or interest of the state, than the method of voting *visa voce*; it shall be lawful and constitutional for the legislature to abolish the same; *Provided* two thirds of the members present in each house respectively shall concur therein. And further, that during the continuance of the present war, and until the legislature of this state shall provide for the election of senators, and representatives in assembly, by ballot, the said elections shall be made *visa voce*.

Qualifications of electors.

VII. That every male inhabitant of full age, who shall have personally resided within one of the counties of this state, for six months immediately preceding the day of election, shall at such election, be entitled to vote for representatives of the said county in assembly; if during the time aforesaid, he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this state: *Provided always*, That every person who now is a freeman of the city of Albany, or who was made a freeman of the city of New-York, on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for representatives in assembly within his said place of residence.

Oath of allegiance.

VIII. That every elector, before he is admitted to vote, shall if required by the returning officer or either of the inspectors, take an oath, or if of the people called quakers, an affirmation, of allegiance to the state.

Privileges of members of Assembly.

IX. That the assembly thus constituted, shall chuse their own speaker, be judges of their own members, and enjoy the same privileges, and proceed in doing business, in like manner as the assemblies of the colony of New-York of right formerly did; and that a majority of the said members shall, from time to time, constitute a house to proceed upon business.

A quorum.

Number of Senators, and by whom chosen.

Time amendments to Constitution.

X. And this convention doth further, in the name, and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That the senate of the state of New-York, shall consist of twenty-four freeholders, to be chosen out of the body of the freeholders, and that they be chosen by the freeholders of this state, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

Their term of election, and rotation in office.

XI. That the members of the senate be elected for four years, and immediately after the first election, they be divided by lot into four classes, six in each class, and numbered, one, two, three, and four; and that the seats of the members of the first class shall be vacated at the expiration of the first year, the second class the second year, and so on continually, to the end that the fourth part of the senate, as nearly as possible, may be annually chosen.

Manner of choosing.

XII. That the election of senators shall be after this manner; that so much of this state as is now parcelled into counties, be divided into four great districts; the Southern district to comprehend the city and county of New-York, Suffolk, Westchester, Kings, Queens, and Richmond counties; the Middle district to comprehend the counties of Dutchess, Ulster and Orange; the

Western district the city and county of Albany, and Tryon county; and the Eastern district, the counties of Charlotte, Cumberland and Gloucester. That the senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, to wit: In the Southern district, nine; in the Middle district, six; in the Western district, six; and in the Eastern district, three. *And be it ordained*, That a census shall be taken as soon as may be, after the expiration of seven years from the termination of the present war, under the direction of the legislature: And if on such census it shall appear, that the number of senators is not justly proportioned to the several districts, that the legislature adjust the proportion as near as may be, to the number of freeholders qualified as aforesaid, in each district. That when the number of electors within any of the said districts shall have increased one twenty-fourth part of the whole number of electors, which by the said census shall be found to be in this state, an additional senator shall be chosen by the electors of such district. That a majority of the number of senators to be chosen as aforesaid, shall be necessary to constitute a senate, sufficient to proceed upon business, and that the senate shall, in like manner with the assembly, be the judges of its own members. *And be it ordained*, That it shall be in the power of the future legislatures of this state, for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts, as shall to them appear necessary.

XIII. And this convention doth further, in the name and by the authority of the good people of this state, **ORDAIN, DETERMINE AND DECLARE**, That no member of this state shall be disfranchised or deprived of any of the rights or privileges secured to the subjects of this state, by this constitution, unless by the law of the land, or the judgment of his peers.

XIV. That neither the assembly or the senate shall have power to adjourn themselves for any longer time than two days, without the mutual consent of both.

XV. That whenever the assembly and senate disagree, a conference shall be held in the presence of both, and be managed by committees to be by them respectively chosen by ballot. That the doors both of the senate and assembly, shall at all times be kept open to all persons, except when the welfare of the state shall require their debates to be kept secret. And the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New-York, and except such parts as they shall as aforesaid respectively determine not to make public, be from day to day (if the business of the legislature will permit) published.

XVI. It is nevertheless provided, That the number of senators shall never exceed one hundred, nor the number of the assembly three hundred; but that whenever the number of senators shall amount to one hundred, or of the assembly to three hundred, then and in such case the legislature shall from time to time hereafter, by laws for that purpose, apportion and distribute the said one hundred senators, and three hundred representatives, among the great districts and counties of this state, in proportion to the number of

Census, and apportionment of the Senators.

A quorum.

To be judges of their own members.

Other counties and districts may be created.

No person to be disfranchised but by law.

No adjournment of either house for more than two days but by mutual consent. Conference between them.

Doors to be open, and

Journals how kept and published.

Number of the Senate and Assembly limited.

See Amendment to Constitution.

their respective electors, so that the representation of the good people of this state, both in the senate and assembly, shall for ever remain proportionate and adequate.

Executive
power vested
in a governor.

When & how
to be chosen.

XVII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the supreme executive power, and authority of this state, shall be vested in a governor; and that stat- edly once in every three years, and as often as the seat of govern- ment shall become vacant, a wise and discreet freeholder of this state shall be by ballot elected governor, by the freeholders of this state, qualified as before described to elect senators; which elec- tions shall be always held at the times and places of choosing re- presentatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said state shall be the governor thereof.

His power.

XVIII. That the governor shall continue in office three years, and shall by virtue of his office, be general and commander in chief of all the militia, and admiral of the navy of this state; that he shall have power to convene the assembly and senate on extra- ordinary occasions, to prorogue them from time to time, provided such prorogations shall not exceed sixty days in the space of any one year; and at his discretion to grant reprieves and pardons to persons convicted of crimes, other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting; and they shall either pardon or direct the execution of the criminal, or grant a further reprieve.

And duty.

XIX. That it shall be the duty of the governor to inform the legislature at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good go- vernment, welfare and prosperity; to correspond with the conti- nental congress, and other states; to transact all necessary busi- ness with the officers of government, civil and military; to take care that the laws are faithfully executed to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

Lieut. Governor.

XX. That a lieutenant-governor shall, at every election of a governor, and as often as the lieutenant-governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a go- vernor; and such lieutenant-governor shall, by virtue of his office, be president of the senate, and, upon an equal division, have a casting vote in their decisions, but not vote on any other occasion.

To be Presi-
dent of the
Senate.

His further
power & duty.

And in case of the impeachment of the governor, or his remo- val from office, death, resignation, or absence from the state, the lieutenant-governor shall exercise all the power and authority, ap- pertaining to the office of governor, until another be chosen, or the governor absent or impeached, shall return or be acquitted: *Provided*, That where the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall still continue in his command of all the military force of this state, both by sea and land.

XXI. That whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senators shall have power to elect one of their own members to the office of president of the senate, which he shall exercise *pro hac vice*; And if, during such vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall, in like manner as the lieutenant-governor, administer the government, until others shall be elected by the suffrage of the people at the succeeding election.

In his absence a President to be chosen by the Senate.

His power and duty.

XXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That the treasurer of this state shall be appointed by act of the legislature, to originate with the assembly: *Provided*, That he shall not be elected out of either branch of the legislature.

Treasurer.

XXIII. That all officers, other than those who by this constitution are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council for the appointment of the said officers, of which the governor for the time being, or the lieutenant-governor, or the president of the senate, when they shall respectively administer the government, shall be president, and have a casting voice, but no other vote; and with the advice and consent of the said council shall appoint all the said officers; and that a majority of the said council be a quorum; And further, the said senators shall not be eligible to the said council for two years successively.

Council of Appointment.

See amendments to constitution.

XXIV. That all military officers be appointed during pleasure; that all commissioned officers, civil and military, be commissioned by the governor, and that the chancellor, the judges of the supreme court and first judge of the county court in every county, hold their offices during good behaviour, or until they shall have respectively attained the age of sixty years.

Tenure of certain offices.

XXV. That the chancellor and judges of the supreme court shall not at the same time hold any other office, excepting that of delegate to the general congress, upon special occasions; and that the first judges of the county courts in the several counties, shall not at the same time hold any other office excepting that of senator, or delegate to the general congress; but if the chancellor, or either of the said judges be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve.

Tenure of certain judicial offices.

XXVI. That sheriffs and coroners be annually appointed; and that no person shall be capable of holding either of the said offices more than four years successively, nor the sheriff of holding any other office at the same time.

Sheriff and Coroners.

XXVII. And be it further ordained, That the register and clerks in chancery be appointed by the chancellor; the clerks of the supreme court by the judges of the said court; the clerk of the court of probates, by the judge of the said court; and the register and marshal of the court of admiralty, by the judge of the

Registers, Clerks and Marshal, by whom appointed.

admiralty. The said marshal, registers and clerks to continue in office during the pleasure of those by whom they are to be appointed, as aforesaid.

Attornies, sol-
licitors and
counsellors,
by whom ap-
pointed.

And all attornies, solicitors and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practise; and be regulated by the rules and orders of the said courts.

Duration of
offices.

XXVIII. *And be it further ordained.* That where by this constitution the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the council of appointment: *Provided*, that new commissions shall be issued to judges of the county courts (other than to the first judge) and to justices of the peace, once at the least in every three years.

Town-Offi-
cers.

XXIX. That town clerks, supervisors, assessors, constables and collectors, and all other officers heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of legislature.

Loan Officers,
County Treas-
urers, and
Supervisor's
clerks.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

Delegates to
Congress.

XXX. That delegates to represent this state in the general congress of the United States of America, be annually appointed as follows, to wit: The senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of delegates to be appointed; after which nomination, they shall meet together, and those persons named in both lists shall be delegates; and out of those persons whose names are not on both lists, one half shall be chosen by the joint ballot of the senators and members of assembly, so met together as aforesaid.

Give the man-
ner of electing
members of
Congress di-
rected by the
Constitution
of the United
States.

Style of laws
and form of
process.

XXXI. That the style of all laws shall be as follows, to wit:—*Be it enacted by the people of the state of New-York, represented in senate and assembly.* And that all writs and other proceedings shall run in the name of, *The people of the state of New-York*, and be tested in the name of the chancellor or chief judge of the court from whence they shall issue.

Court for the
trial of im-
peachments
and the cor-
rection of er-
rors.

XXXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That a court shall be instituted for the trial of impeachments, and the correction of errors, under the regulations which shall be established by the legislature; and to consist of the president of the senate for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal: And in like manner, when an appeal from a decree in equity shall be heard, the chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error on a question of law, on a judgment in the supreme court, the judges of the court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

XXXIII. That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two third-parts of the members present shall consent to and agree in such impeachment. That previous to the trial of every impeachment, the members of the said court shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence; and that no judgment of the said court shall be valid, unless it shall be assented to by two third-parts of the members then present; nor shall it extend farther than to removal from office, and disqualification to hold or enjoy any place of honor, trust or profit, under this state. But the party so convicted, shall be, nevertheless, liable and subject to indictment, trial, judgment and punishment, according to the laws of the land.

Power of impeachment, and manner of proceedings.

XXXIV. *And it is further ordained,* That in every trial on impeachment or indictment for crimes or misdemeanors, the party impeached or indicted, shall be allowed counsel, as in civil actions.

Party accused to be allowed counsel.

XXXV. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the nineteenth day of April, in the year of our Lord, one thousand seven hundred and seventy-five, shall be and continue the law of this state; subject to such alterations and provisions as the legislature of this state shall, from time to time, make concerning the same. That such of the said acts as are temporary, shall expire at the times limited for their duration respectively. That all such parts of the said common law, and all such of the said statutes, and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government or prerogatives, claimed or exercised by the King of Great-Britain and his predecessors, over the colony of New-York and its inhabitants, or are repugnant to this constitution, be, and they hereby are abrogated and rejected. And this convention doth further ordain, that the resolves or resolutions of the congresses of the colony of New-York, and of the convention of the state of New-York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this state; subject, nevertheless, to such alterations and provisions, as the legislature of this state may from time to time make, concerning the same.

Law of the state.

XXXVI. *And be it further ordained,* That all grants of land within this state, made by the king of Great-Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void: But that nothing in this constitution contained shall be construed to affect any grants of land within this state, made by the authority of the said king or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them, made

Grants by the King after a certain period void.

Charter rights
and former
grants preserved.

prior to that day. And that none of the said charters shall be adjudged to be void by reason of any non-user, or mis-user of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. *And further*, That all such of the officers described in the said charters respectively, as by the terms of the said charters, were to be appointed by the governor of the colony of New-York, with or without the advice and consent of the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution, for the appointment of officers in this state, until otherwise directed by the legislature.

Purchasers of
lands from the
Indians.

XXXVII. *And whereas* it is of great importance to the safety of this state, that peace and amity with the Indians within the same, be at all times supported and maintained. *AND WHEREAS* the frauds too often practised towards the said Indians, in contracts made for their lands, have in divers instances been productive of dangerous discontents and animosities; *BE IT ORDAINED*, That no purchases or contracts for the sale of lands, made since the fourteenth day of October, in the year of our Lord, one thousand seven hundred and seventy-five, or which may hereafter be made with or of the said Indians, within the limits of this state, shall be binding on the said Indians, or deemed valid, unless made under the authority, and with the consent of the legislature of this state.

Free exercise
of religion.

XXXVIII. *And whereas* we are required by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance, wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind: This convention doth further, in the name and by the authority of the good people of this state, *ORDAIN, DETERMINE AND DECLARE*, That the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind: *Provided*, That the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

No Minister
or Priest to
hold any of-
fice.

XXXIX. *And whereas* the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding any civil or military office or place within this state.

Militia.

XL. *And whereas* it is of the utmost importance to the safety of every state, that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society, to be prepared and willing to defend it: This convention therefore, in the name and by the authority of the good people of this state, doth *ORDAIN, DETERMINE AND DECLARE*, That the militia of this state, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service.

That all such of the inhabitants of this state, being of the people called Quakers, as from scruples of conscience may be averse to the bearing of arms, be therefrom excused by the legislature; and do pay to the state such sums of money in lieu of their personal service, as the same may, in the judgment of the legislature, be worth: And that a proper magazine of warlike stores, proportionate to the number of inhabitants, be forever hereafter, at the expense of this state, and by acts of the legislature, established, maintained, and continued in every county in this state. Magazines

XLl. And this convention doth further ORDAIN, DETERMINE AND DECLARE, in the name and by the authority of the good people of this state, That trial by jury, in all cases in which it hath heretofore been used in the colony of New-York, shall be established, and remain inviolate for ever. And that no acts of attainder shall be passed by the legislature of this state, for crimes other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood.— And further, that the legislature of this state shall at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law. Trial by jury.

XLII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That it shall be in the discretion of the legislature to naturalize all such persons, and in such manner as they shall think proper; provided all such of the persons so to be by them naturalized, as being born in parts beyond sea, and out of the United States of America, shall come to settle in, and become subjects of this state, shall take an oath of allegiance to this state, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate and state, in all matters ecclesiastical as well as civil. Naturalization.

By order,

LEONARD GANSEVOORT,
PRESID. P. T.

AMENDMENTS.

In Convention of the Delegates of the State of New-York.

ALBANY, October 27, 1801.

WHEREAS the legislature of this state, by their act passed the sixth day of April last, did propose to the citizens of this state to elect by ballot delegates to meet in convention, "for the purpose of considering the parts of the constitution of this state respecting the number of senators and members of Assembly in this state, and with power to reduce and limit the number of them as the said convention might deem proper: and also for Preamble

"the purpose of considering and determining the true construction of the twenty-third article of the constitution of this state, relative to the right of nomination to office."

And whereas the people of this state have elected the members of this convention for the purpose above expressed; and this convention having maturely considered the subject thus submitted to their determination, do, in the name and by the authority of the people of this state, **ORDAIN, DETERMINE AND DECLARE:**

I. That the number of the members of the assembly hereafter to be elected shall be one hundred, and shall never exceed one hundred and fifty.

II. That the legislature at their next session shall apportion the said one hundred members of the assembly among the several counties of this state, as nearly as may be, according to the number of electors which shall be found to be in each county by the census directed to be taken in the present year.

III. That from the first Monday in July next, the number of the senators shall be permanently thirty-two, and that the present number of senators shall be reduced to thirty-two in the following manner, that is to say:—The seats of the eleven senators composing the first class, whose time of service will expire on the first Monday in July next, shall not be filled up; and out of the second class the seats of one senator from the middle district and of one senator from the southern district shall be vacated by the senators of those districts belonging to that class casting lots among themselves; out of the third class, the seats of two senators from the middle district, and of one senator from the eastern district, shall be vacated in the same manner; out of the fourth class, the seats of one senator from the middle district, of one senator from the eastern district, and of one senator from the western district, shall be vacated in the same manner; and if any of the said classes shall neglect to cast lots, the senate shall in such case proceed to cast lots for such class or classes so neglecting. And that eight senators shall be chosen at the next election in such districts as the legislature shall direct, for the purpose of apportioning the whole number of senators amongst the four great districts of this state, as nearly as may be, according to the number of electors qualified to vote for senators, which shall be found to be in each of the said districts by the census above mentioned; which eight senators so to be chosen shall form the first class.

IV. That from the first Monday in July next, and on the return of every census thereafter, the number of the assembly shall be increased at the rate of two members for every year, until the whole number shall amount to one hundred and fifty; and that upon the return of every such census, the legislature shall apportion the senators and members of the assembly amongst the great districts and counties of this state, as nearly as may be, according to the number of their respective electors; *Provided*, That the legislature shall not be prohibited by any thing herein contained, from allowing one member of assembly to each county, heretofore erected within this state.

V. And this convention do further, in the name and by the authority of the people of this state, **ORDAIN, DETERMINE AND**

Members of Assembly to be 100 and never to exceed 150.

To be apportioned by the Legislature.

Number of Senators reduced to 32, and the manner of reducing.

Mode of increasing the Assembly till it arrive to 150, and the Legislature to apportion Senators and Assemblymen.

DECLARE, That by the true construction of the twenty-third article of the constitution of this state, the right to nominate all officers other than those who by the constitution are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being and in each of the members of the council of appointment.

True construction of 23d article of constitution declared as to the Council of Appointment.

By order,

A. BURR, Prest.
of the Convention, and Delegate
from Orange county.

Attest,

JAMES VAN INGEN, }
JOSEPH CONSTANT, } Secretaries:

LAWS

OF THE

STATE OF NEW-YORK.

BILL OF RIGHTS.

CHAP. I.

An ACT concerning the Rights of the Citizens of this State.

Passed 26th January, 1787.

Tenth session,
ch. 1.

[Vide "The Charter of liberties and privileges granted by his royal highness to "the inhabitants of New-York and its dependences"—passed in General Assembly, October 30, 1683, (being the first Legislature ever held in the Colony of New-York) and also the "act declaring what are the rights and privileges "of their majesties' subjects inhabiting within their provinces of New-York"—passed April, 1691. Vide Bradford's edition of 1710, page 1.]

J.&V. v. 2. 1.—Gr. v. 1. 289.—K.&R. v. 1. 47.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted and declared by the authority of the same; First, That no authority shall, on any pretence whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

Second, That no citizen of this state shall be taken or imprisoned, or be disseized of his or her freehold, or liberties, or free customs; or outlawed, or exiled, or condemned, or otherwise destroyed, but by lawful judgment of his or her peers, or by due process of law.

Third, That no citizen of this state shall be taken or imprisoned, for any offence, upon petition or suggestion, unless it be by indictment or presentment of good and lawful men of the same neighborhood where such deeds be done, in due manner, or by due process of law.

Fourth, That no person shall be put to answer without presentment before justices, or matter of record, or due process of law, according to the law of the land; and if any thing be done to the contrary, it shall be void in law, and holden for error.

Fifth, That no person, of what state or condition soever, shall be taken or imprisoned, or disinherited, or put to death, without being brought to answer by due process of law; and that no person shall be put out of his or her franchise or freehold, or loss his or her life or limb, or goods and chattels, unless he or she be duly brought to answer, and be fore-judged of the same, by due course of law; and if any thing be done contrary to the same, it shall be void in law and holden for none.

Colonial charter of rights, &c.

2. W.&M. Br. Ed. page 3. vide also 1. E. H. c. 1.

Restoring to the crown its ancient jurisdiction.

Magna Charta 9. H. 3. c. 39. Confirmed by 32 subsequent acts of parliament.

25. Ed. 3. st. 5. c. 4.

42 Ed. 3. c. 3.

9. H. 3. c. 39. 26 Ed. 3. st. 5. c. 4. 31 Ed. 3. st. 4. c. 16. 43 Ed. 3. c. 7. 52 H. 3. c. 22.

Sixth, That neither justice nor right shall be sold to any person, nor denied, nor deferred; and that writs and process shall be granted freely and without delay, to all persons requiring the same; and nothing from henceforth shall be paid or taken for any writ or process, but the accustomed fees for writing, and for the seal of the same writ or process; and all fines, duties and impositions whatsoever, heretofore taken or demanded, under what name or description soever, for or upon granting any writs, inquests, commissions or process to suitors in their causes, shall be, and hereby are abolished.

Seventh, That no citizen of this state shall be fined or amerced without reasonable cause, and such fine or amercement shall always be according to the quantity of his or her trespass or offence, and saving to him or her his or her contentment; That is to say, Every freeholder saving his freehold, a merchant saving his merchandize, and a mechanic saving the implements of his trade.

Eighth, That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ninth, That all elections shall be free; and that no person, by force of arms, nor by malice or menacing, or otherwise, presume to disturb or hinder any citizen of this state to make free election, upon pain of fine and imprisonment, and treble damages to the party grieved.

Tenth, That it is the right of the citizens of this state to petition the person administering the government of this state for the time being, or either house of the legislature; and all commitments and prosecutions for such petitioning, are illegal.

Eleventh, That the freedom of speech and debates, and proceedings in the senate and assembly, shall not be impeached or questioned in any court or place out of the senate or assembly.

Twelfth, That no tax, duty, aid or imposition whatsoever, shall be taken or levied within this state, without the grant and assent of the people of this state by their representatives in senate and assembly; and that no citizen of this state shall be by any means, compelled to contribute to any gift, loan, tax, or other like charge, not set, laid or imposed by the legislature of this state: *And further,* That no citizen of this state shall be constrained to arm himself, or to go out of this state, or to find soldiers, or men of arms either horsemen or footmen, if it be not by assent and grant of the people of this state, by their representatives in senate and assembly.

Thirteenth, That by the laws and customs of this state, the citizens and inhabitants thereof cannot be compelled against their wills, to receive soldiers into their houses, and to sojourn them there; and therefore, no officer, military or civil, nor any other person whatsoever, shall, from henceforth, presume to place, quarter, or billet any soldier or soldiers, upon any citizen or inhabitant of this state, of any degree or profession whatever, without his or her consent; and that it shall and may be lawful for every such citizen and inhabitant, to refuse to sojourn or quarter any soldier or soldiers, notwithstanding any command, order, warrant, or billeting whatever.

25. Ed. 1. c. 5.
13. Car. 2. st.
1. c. 4.
34. Ed. 1. st.
4. c. 1.
41. Ed. 3. st.
2. c. 6.
45. Ed. 3. c. 4.
21. H. 2. c. 9.

37. Car. 2. c.
1. f. 54.
Colonial char-
ter's Rights,
Sec. 3. W. & M.
Rev. Ed. p. 4.

CHAP. XXVI.

An ACT authorising Magistrates within this State, to take Affidavits to be used in the manner therein mentioned.

Passed 10th April, 1784.

[J.&V. v. 1. 112.—Gr. v. 1. 78.—K.&R. v. 1. 40.]

WHEREAS persons residing within this state may be material witnesses in causes to be tried in others of the United States, and may refuse to attend at the trial of such causes, or voluntarily to make affidavit of the circumstances they may know, touching the matter in dispute : And whereas, it is represented to this legislature, that it is the practice in the courts of justice in some of the United States, to admit as legal evidence, affidavits taken in the manner hereinafter mentioned :

I. *Be it therefore enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That it shall be lawful for a judge of the supreme court, or any magistrate of any city or county within this state, upon application, by, or in behalf of either of the parties to a suit depending in a court of judicature in any other of the United States, and information, that any person residing within the county where such application is made, is a material witness in the suit, to issue a summons to such person, requiring him or her to appear and make affidavit of all such matters and things, as he or she may know concerning the same, and to transmit the affidavit to the court where the cause is depending, in such manner as the practice of such court may require to render such affidavit legal testimony.

Witnesses compelled to make affidavit in cases depending in the courts of any other state.

II. *Provided always, and be it further enacted by the authority aforesaid,* That every witness who shall be summoned to give evidence in manner aforesaid, shall be entitled to receive from the party at whose instance he shall be summoned, four shillings for every day he shall give his attendance; and that no witness shall be bound to appear by virtue of this act, except only before one of the judges or magistrates who shall be nearest to the place of residence of such witness.

Allowance to such witness &c.

III. *And be it further enacted by the authority aforesaid,* That whenever any person shall refuse to appear and make affidavit in pursuance of such summons, a warrant shall issue from such judge or magistrate, to compel his appearance, and if on his appearance, he shall refuse to make affidavit, or affirmation if a Quaker, of the fact which may be within his knowledge, touching the matters in question, he shall be committed to the common gaol of the county, there to remain without bail or mainprize for the term of six calendar months.

Witnesses refusing, to be committed.

EIGHTH SESSION.

CHAP. LXXXI.

An ACT to prevent the Firing of Guns and other Fire-Arms within this State, on certain days therein mentioned.

Passed 22d April, 1785.

[V.S. v. 2. 763.—J.&V. v. 1. 222.—Gr. v. 1. 138.—K.&R. v. 1. 41.]

WHEREAS great dangers have arisen, and mischief been done

91 & 19. W. 3.
c. 7.

by the pernicious practice of firing guns, pistols, rockets, squibs, and other fire-works, on the eve of the last day of December, and first and second days of January : For prevention whereof for the future,

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if any person or persons whomsoever, shall fire or discharge any gun, pistol, rocket, squib or other fire-work, within a quarter of a mile of any building, on the said eve or days before mentioned, every such person or persons so offending, and being thereof convicted before any justice of the peace of the city or county where such offence shall be committed, either by the confession of the party or parties so offending, or the oath of any one credible witness, shall for every such offence, forfeit the sum of forty shillings, with costs of suit, to be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of the said justice before whom such conviction or convictions shall be had as aforesaid ; the one moiety of which forfeiture to be applied to the use of the poor of the town or place wherein such offender shall be convicted, and the other moiety to the use of the person or persons who shall prosecute for the same ; and for want of sufficient distress whereon to levy the same, every such justice is hereby empowered and required, by warrant under his hand and seal, to commit every such person or persons so as aforesaid offending, to the common gaol of the county wherein the said forfeiture shall arise, there to remain without bail or mainprise, for the space of one month, unless such forfeiture or forfeitures be sooner paid.

NINTH SESSION.

CHAP. VII.

An ACT for regulating Trials upon Writs of Rights.

Passed 6th February, 1786.

[J.&V. v. 1. 339—Gr. v. 1. 192—K.&R. v. 1. 43.]

Co. Litt. 164.
284.—2 Inst.
46.
St. de magnis
assisis incerti
temp.
Rush. v. 1. 189.
Booth 177. 179.
F.N.B. 229.

WHEREAS formerly trials upon writs of right were by battle or the grand assise. And whereas the barbarous custom of trials by battle hath deservedly fallen into disuse, but hath never been abrogated by law. And whereas by the institution of the trial by the grand assise, four knights are to be summoned to elect the recognitors : and whereas there is not, nor cannot, by law, be any such order of men in this state ;

Trial by bat-
tle abolished.

I. *BE it enacted by the people of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That trials by battle in all cases shall be, and hereby are forever abolished.

Election of the
grand assise.

II. *And be it further enacted by the authority aforesaid,* That in all writs hereafter to be issued for summoning electors of the grand assise, instead of the words, *Four lawful knights of your county girt with swords*, the words *four good and lawful men of your county*, shall be inserted. And that every of the said men to be summoned and returned to make election of the grand assise, shall always be such as are or shall be duly qualified to vote for senators according to the constitution of this state

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III. *And be it further enacted by the authority aforesaid,* That if either party shall have cause to challenge the electors so summoned and returned, or any of them, such challenge shall be taken and made upon their appearance, and before they be sworn to make election of the grand assise, and not after : and the justices shall thereupon proceed to try and determine such challenges, in such manner as challenges, in cases of common juries, are, by law, to be tried and determined. And if any such electors shall be found not duly qualified, or not indifferent between the parties, then a new writ shall be issued for summoning another, or others, as the case may require ; and those who are not challenged, or found duly qualified and indifferent between the parties, as well as the parties, shall be adjourned over to the day of the return of such new writ. And when such four electors as shall not be challenged, or shall be found duly qualified and indifferent, shall appear, they shall be severally sworn, lawfully and truly to chuse, in the presence of the parties, in addition to themselves, twenty other good and lawful men of the county, who best know and will declare the truth between the parties, to make recognition of the grand assise ; and every of the recognitors so to be chosen by the said four electors, shall always be such men as shall be duly qualified by the laws of this state, to serve as jurors upon trials at bar in the supreme court ; and if either party shall have cause to challenge any of the said recognitors, such challenge shall be taken and made before the said four electors, who shall immediately try and determine the same. And if any man named by the said four electors as a recognitor, shall be challenged, and found not duly qualified, or not indifferent between the parties, they shall leave his name out of the pannel, and chuse another in his stead, and when they have completed a pannel of twenty-four recognitors of themselves, and others as aforesaid, they shall, in their proper persons, return and deliver the same to the justices in open court.

Challenge of the electors

Recognitors chosen.

Their qualifications.

Challenge of recognitors.

3. Calver Rep. 190.

Recognitors how summoned and sworn.

3. John. ca. 124.

On default distringas to issue.

Trial, where had.

IV. *And be it further enacted by the authority aforesaid,* That upon the delivery of such pannel into court, a writ shall issue to the proper officer, commanding him to cause the said recognitors to come before the justices, at a certain day and place, to make recognition of the grand assise between the parties : And if the cause is to be tried at the circuit court in any of the counties, a proper clause of *nisi prius* shall be inserted in such writ for the purpose ; and when a sufficient number of the said recognitors shall appear to make the said recognition, such of them as do appear, shall be called and sworn as they stand upon the said pannel, until sixteen of them shall be sworn, who shall make the said recognition.

V. *And be it further enacted by the authority aforesaid,* That if a sufficient number of the said recognitors to make the said recognition, shall not appear at the return of the first process for summoning them, writs of *distringas* shall be issued against them, from time to time, until they shall appear.

VI. *And be it further enacted by the authority aforesaid,* That all trials upon writs of right, shall be had in the county where the tenements in demand shall be situated, unless the court upon motion of either party, shall order the trial to be at the bar of the supreme court.

CHAP. XII.

An ACT to abolish Entails, to confirm Conveyances by Tenants in Tail, to regulate Descents, and to direct the Mode of Conveyances to Joint-Tenants.

Passed 23d February, 1786.

[J.&V. v. 1. 245.—Gr. v. 1. 205.—K.&R. v. 1. 44.]

Estates tail abolished.

Persons seized in fee tail, deemed seized in fee simple.

Otherwise by the common law. vide also Westm. 3. 13. Ed. 1 c. 1. But may be barred by fine with proclamations under 4. 11. 7. c. 24. vide also 33 H. 8. c. 36.

Conveyances by tenants in tail, in certain cases effectual

Inheritances, how to descend.

3 Bl. Com. 200. et seq. for descents at common law.

To lawful issue of equal degree.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all estates tail shall be, and are hereby abolished; and that in all cases where any person or persons now is, or are, or if the act herein after mentioned and repealed had not been passed, would now be seized in fee tail of any lands, tenements or hereditaments, such person and persons shall be deemed to be seized of the same in fee simple absolute. *And further,* That in all cases where any person or persons would, if the said act and this present act had not been passed, at any time hereafter become seized in fee tail of any lands, tenements or hereditaments, by virtue of any devise, gift, grant or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person and persons, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to become seized thereof in fee simple absolute.

II. And be it further enacted by the authority aforesaid, That where any lands, tenements or hereditaments heretofore have been devised, granted or otherwise conveyed by a tenant in tail, and the person or persons to whom such devise, grant or other conveyance hath been made, his, her or their heirs or assigns, have or hath, from the time such devise took effect, or from the time such grant or other conveyance was made, to the day of the passing of this act, been in the uninterrupted possession of such lands, tenements or hereditaments, and claiming and holding the same under or by virtue of such devise, grant or other conveyance, then such devise, grant or other conveyance shall be deemed as good, legal and effectual, to all intents and purposes, as if such tenant in tail had, at the time of the making of such devise, grant or other conveyance, been seized of such lands, tenements or hereditaments in fee simple; any law to the contrary hereof notwithstanding.

III. And be it further enacted by the authority aforesaid, That where any person shall die seized of any lands, tenements or hereditaments, without devising the same in due form of law, and leaving more than one person lawful issue, or without lawful issue, the inheritance shall hereafter, in the five several following cases, descend and go as in each case is particularly specified; That is to say,

First, In case the person so seized shall leave several persons lawful issue, in the direct line of lineal descent, and all of equal degree of consanguinity to the person so seized, the inheritance shall then descend to the said several persons as tenants in common, in equal parts, however remote from the person so seized the common degree of consanguinity may be, in the same manner as if they were all daughters of the person so seized.

Secondly, In case the said person so seised shall die, leaving lawful issue of different degrees of consanguinity to him or her, the said person so seised, the inheritance shall descend to the lawful child or children of the said person so seised, if any or either of them be then living, and to the lawful issue of such of the children of the said person so seised, as shall be then dead, leaving lawful issue, as tenants in common; such issue always to inherit, if one person solely, and if several persons as tenants in common, in equal parts, such share only as would have descended to his, her or their parent, if such parent had been then living;—and each of the lawful children of the said person so seised, always to inherit such share as would have descended to him or her, if all the children of the said person so seised, who shall be then dead, leaving lawful issue, had been living at the time of the death of the said person so seised; and if there be no child of the said person so seised living, at the time of the death of the said person so seised, and only a grand child or grand children, and the lawful issue of a grand child or grand children, who shall be then dead, leaving lawful issue, then the inheritance shall descend to such grand child or grand children of the person so seised, and to the lawful issue of such of the grand children of the said person so seised, as shall be then dead, leaving lawful issue, as tenants in common; such issue always to inherit, if one person solely, and if several persons as tenants in common, in equal parts, such share only as would have descended to his, her or their parent, if such parent had been then living; and each of the grand children of the said person so seised, who shall be living at the time of the death of the person so seised, always to inherit such share as would have descended to him or her, if all the grand children of the said person so seised, who shall be then dead, leaving lawful issue, had been living at the time of the death of the said person so seised. And the same law of inheritance and descent, shall be observed in case of the death of the grand children, and other descendants to the remotest degree.

To lawful issue of different degrees.

Thirdly, In case the said person so seised shall die without lawful issue, leaving a father, then the inheritance shall go to the father of the said person so seised, in fee simple; unless the said inheritance came to the person so seised, from the part of his or her mother, in which case it shall descend, as if such person so seised had survived his or her father.

When the father to inherit.

Fourthly, In case the said person so seised shall, after the death of his or her father, die without lawful issue, leaving a brother or sister, or leaving a brother or brothers, and a sister or sisters, the inheritance shall descend to such brothers or sisters, or to such brother or brothers, and sister or sisters, as the case may be, as tenants in common in equal parts; and in such case every brother and sister of the half blood of the said person so seised, shall inherit equally with those of the whole blood; unless where such inheritance came to the said person so seised by descent, devise or gift, of some one of his or her ancestors, in which case all those who are not of the blood of such ancestors, shall be excluded from such inheritance. And,

Brothers and sisters.

Half blood.

Fifthly, In case any such brother or sister who would have in,

Children of
brothers and
sisters.

Vide 2 Bl.
Com. 204, 5,
for table of
consanguinity,
&c.

In other cases
the common
law to govern.

Estates by the
courtesy or in
dower not af-
fected.

Posthumous
children.

10. & 11. W.3.
c. 16. 3. John.
ca. 18.

No estates in
joint-tenancy
except in cer-
tain cases.

Former act
of 6th ses. ch.
2. repealed.

Conveyances
to executors
and trustees.

herited by this law, if living, shall die before the said person so seised, and leave a lawful child or children, such child or children surviving the said person so seised, shall inherit, if a child solely, and if children, as tenants in common in equal parts, such share as would have descended to his, her or their father or mother, if such father or mother had survived the said person so seised. And in all cases of descent, not particularly provided for by this act, the common law shall govern.

IV. *Provided always, and be it further enacted by the authority aforesaid*, That nothing herein contained shall be construed to bar or injure the right or estate of a husband, as tenant by the courtesy, or a widow's right of dower.

V. *And be it further enacted by the authority aforesaid*, That all posthumous children shall, in all cases whatsoever, inherit in like manner as if they were born in the lifetime of their respective fathers.

VI. *And be it further enacted by the authority aforesaid*, That no estate in joint-tenancy in lands, tenements or hereditaments, shall be held or claimed by or under any grant, devise or conveyance whatsoever, hereafter to be made, other than to executors or trustees, unless the premises therein mentioned shall expressly be thereby declared to pass, not in tenancy in common, but in joint-tenancy, and every such estate, other than to executors or trustees, unless otherwise expressly declared as aforesaid, shall be deemed to be in tenancy in common; any law, custom or usage to the contrary notwithstanding.

VII. *And be it further enacted by the authority aforesaid*, That the act, entitled "*An act to abolish entails, to confirm conveyances by tenants in tail, to distribute estates real of intestates, to remedy defective conveyances to joint-tenants, and directing the mode of such conveyances in future*", passed the twelfth day of July, in the year of our Lord one thousand seven hundred and eighty-two, shall be, and hereby is repealed; but all descents and conveyances which have happened or been made since the passing of the said act, hereby repealed, shall take effect according to the said act. *Provided always*, That notwithstanding any thing in the said act contained, every grant, conveyance or devise heretofore made, or hereafter to be made, to executors or trustees, shall be deemed to be in joint-tenancy, and not in tenancy in common.

TENTH SESSION.

CHAP. II.

An ACT for taking away and abolishing all Right and Claim of Purveyance within this State.

Passed 26th January, 1787.

[J.&V. v. 2. 2.—Gr. v. 1. 291.—K.&R. v. 1. 49.]

Purveyance
abolished.

12 Car. 2. c.
24. § 12.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That no sum or sums of money, or other thing, shall

be taken, raised, taxed, rated, imposed, paid or levied, for or in regard of any provision, carriages or purveyance for the chief magistrate or officer, or any other officer or officers for the time being, of this state, or of the United States, or for any person or persons whomsoever; and that no person or persons, by any warrant, commission or authority, under the great seal, or otherwise, by colour of buying or making provision or purveyance for the chief magistrate or officer, or any other officer, or officers for the time being, of this state, or of the United States, or for his, their or any of their household, or for any person or persons whomsoever, shall take any timber, fuel, cattle, corn, grain, malt, hay, straw, victuals, cart, carriage, or other thing whatsoever, of any of the citizens of this state, without the free and full consent of the owner or owners thereof, had and obtained without menace or enforcement; nor shall summon, warn, take, use, or require any of the said citizens to furnish or find any horses, oxen or other cattle, carts, waggons, wains, or other carriages for the use of the chief magistrate or officer, or of any other officer or officers for the time being, of this state, or of the United States, or of any other person or persons whomsoever, for the carrying of his or their, or any of their goods, without such full and free consent as aforesaid. *And further*, That no pre-emption shall be allowed or claimed in the behalf of the chief magistrate or officer, or of any other officer or officers for the time being, of this state, or of the United States, or of any other person or persons whomsoever, in market or out of market; but that it shall be forever hereafter free to all and every of the citizens of this state, to sell, dispose or employ his and her goods to any other person or persons, at his or her pleasure; any pretence of making provision or purveyance of victuals, carriages, or other things for the chief magistrate or officer, or other officer or officers for the time being, of this state, or of the United States, or for any other person or persons whomsoever, or any pretence of pre-emption in his, their or any or either of their behalfs notwithstanding; and if any person or persons shall, at any time hereafter, make provision or purveyance for the chief magistrate or officer, or any other officer or officers for the time being, of this state or of the United States, or for any other person or persons whomsoever, or impress, or take any such carriages, or other things aforesaid, on any pretence or colour of any warrant aforesaid, under the great seal, or otherwise contrary to the intent of this act, it shall be lawful for the justices of the peace, or any one or more of them dwelling near, and the constables of such town or place where such occasions shall happen, at the request of the party grieved, and they are hereby enjoined, to commit, or cause to be committed the party or parties so doing and offending, to gaol, till the next general sessions, there to be indicted and proceeded against for the same; and that the officers and inhabitants of the said town or place where such offence shall happen, shall be assistant therein: *And moreover*, The party grieved shall have his or her action or actions against such offender or offenders, and therein recover his or her treble damages and treble costs; in which action no aid-prayer, privilege,

9. H. 3. c. 21.

34. Ed. 1. c. 4.

c. 2.

3 Ed. 1. c. 1.

34 Ed. 3. c. 2.

36 Ed. 3. c. 3. 4.

7. R. 2. c. 2.

23 H. 6. c. 12.

34 Ed. 1. c. 4.

c. 2.

20. R. 2. c. 5.

28. H. 6. c. 2.

No pre-emption to any one in or out of market.

Any person making purveyance punished.

Treble damages to the party grieved.

protection, imparlance, injunction, or order of restraint, shall be granted or allowed : And if any person or persons shall (after notice given that the action depending is grounded upon this statute) cause or procure any action at the common law, grounded on this statute, to be delayed or stayed before judgment, by colour or means of any order, injunction, power, warrant, or authority, save only of the court where such action shall be brought and depending ; or after judgment had upon such action, shall cause or procure execution of such judgment to be stayed or delayed, by colour or means of any order, injunction, warrant, power or authority, save only by writ of error or attain,* or order of such court where such writ of error or attain shall be depending ; that then the person so offending shall forfeit to the people of this state, all his or her goods and chattels, and the issues and profits of his or her lands and tenements during life.

Action not to be stayed but by writ of error.

12 Car. 2. c. 34. § 14.

* Attainments abolished, sess. 11. c. 46.

CHAP. III.

An ACT for the Recovery of Damages in Writs of Assise and real Actions.

Passed 26th January, 1787.

[J.&V. v. 2. 4. Gr. v. 1. 292. K.&R. v. 1. 51.]

Plaintiff to recover damages in all assises, writs of entry and possessory actions.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That in all assises, if judgment be given for the plaintiff, he or she shall recover his or her damages ; and in all assises of novel disseisin and writs of entry, the demandants, if they recover the tenements demanded, shall also recover their damages against the disseisors : And if the disseisors alien the land, and have not whereof the damages may be levied, they to whose hands such tenements shall come, shall be charged with the damages, so that every one shall answer for his or her time : And further, That in all writs and actions possessory, whereby lands or tenements are demanded, damages shall be recovered as aforesaid.

6 Ed. 1. c. 1. 14.
6. Ed. 1. c. 51.
Westm. 2. 13
Ed. 1. c. 5. 25.
1. R. 2. c. 9.
4. H. 4. c. 8.
13. Ed. c. 5.

CHAP. IV.

An ACT concerning Dower.

Passed 26th January, 1787.

[V.&J. v. 2. 4.—Gr. v. 1. 292.—K.&R. v. 1. 51.]

Right of dower.
1 Coines 185.
2 John. Ca. 20.
6 John. Rep. 259.
7 John. Rep. 247. 278.
1 John. Ca. 37.
3 John. Rep. 484.
9. H. 3. c. 7.
30. 11. 3. c. 20.

Act of the Colonial General Assembly, 1693, Oct. 30.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That a widow, after the death of her husband, shall give nothing for her dower, or her inheritance which her husband and she held at the day of the death of her husband ; and she shall tarry in the chief house of her husband forty days after the death of her husband, or until her dower be assigned to her ; and she shall have in the mean time her reasonable sustenance out of the estate of her husband ; and for her dower shall be assigned unto her the third part of all the lands of her husband, which were his at any time during the coverture.

II. *And be it further enacted by the authority aforesaid, That* Widows de-
forced or their
dower to recov-
er damages.
in case widows, after the death of their husbands, be deforced of
their dowers, and cannot have their dowers or quarantine with-
out suit, whosoever deforce them of their dowers, or quarantine of
the lands whereof their husbands died or shall die seized, and be
convicted of such wrongful deforcement, shall yield damages to
the same widows; That is to say, The value of the whole dower
to them belonging, from the time of the death of their husbands
unto the day that the said widows shall recover seisin of their
dowers by judgment of the court, and the deforceors shall never-
theless be amerced.

III. *And be it further enacted by the authority aforesaid, That* Writ unde ab
nil habet not
to abate, &c.
in a writ of dower *unde nihil habet*, the writs shall not abate by
the exception of the tenant, because she hath received her dower
of another person before her writ purchased, unless he can shew
that she hath received part of her dower of himself, and in the
same town, before the writ purchased.

IV. *And be it further enacted by the authority aforesaid, That* Dower in
la de r covered
ed against the
husband by
covin or de-
fault.
in case where the husband be impleaded for land, giveth up the
land demanded unto his adversary, by covin, after the death of
the husband, his wife shall recover her dower of the same land, if
she demand it by writ; and in case where the husband loseth the
land in demand by default, and his wife after his death demandeth
her dower, she shall be heard; and if it be alledged against her,
that her husband lost the land whereof dower is demanded, by
judgment, whereby she ought not to have dower, and then it be
required by what judgment, and it be found that it was by default,
whereunto the tenant must answer, then it behoveth the tenant
to answer further, and shew that he had and hath right in the same
land, according to the form of the writ that the tenant before
purchased against the husband; and if he can shew that the hus-
band of such wife had no right in the lands, nor any other but he
that holdeth them, the tenant shall go quit, and the wife shall
not recover her dower therein; which thing, if he cannot shew,
the wife shall recover her dower.

V. *And be it further enacted by the authority aforesaid, That* Infant heir to
recover a-
gainst a wo-
man endowed
by default or
collusion.
where a woman, not having a right to demand dower, and the
heir being within age, shall purchase a writ of dower against a
guardian, and the guardian shall endow the woman by favour, or
make default, or by collusion defend the plea faintly, whereby the
woman is awarded her dower in prejudice of the heir; in all such
cases, the heir when he comes to full age, shall have an action to
demand the seisin of his ancestor against such a woman, like as he
should have against any other deforceor. But the woman shall
have her exception saved against the demandant, to shew that
she had right to her dower, which if she can shew, she shall go
quit and retain her dower, and the heir shall be amerced; and if
she cannot shew that she had a right to her dower, the heir shall
recover his demand; and in like manner a woman shall be aided,
if the heir, or any other do implead her for her dower, or if she
lose her dower by default, in which case the default shall not be
so prejudicial to her but that she shall recover her dower if she
have right thereto; and she shall have a writ in this form: *Com-*

Form of writ
to recover
dower lost by
default.

mand A, that justly and without delay, he render to B, who was the wife of F, so much land, with the appurtenances, in C, which she claims to be her reasonable dower, or, of her reasonable dower, and of which the aforesaid A deforceth her. And to this writ the tenant shall have his exception, to shew that she had no right to be endowed, which if he can verify, he shall go quit; if not, the woman shall recover the land whereof she was before endowed.

Guardian to
have writ of
admeasur-
ment of dower.

13 Ed. I. c. 7.

Manner of
proceeding
therein.

VI. And be it further enacted by the authority aforesaid, That a writ of admeasurement of dower shall be from henceforth granted to a guardian, and the heir when he cometh to full age, shall not be barred by the suit of such guardian that sueth against the tenant in dower feignedly and by collusion, but that he may admeasure the dower after as it ought to be admeasured by law; and in the writ of admeasurement of dower, as well as in the writ of admeasurement of pasture, when it is come to the great distress, day shall be given within which two counties may be holden, at which open proclamation shall be made, that the defendant shall come at the day contained in the writ to answer to the plaintiff; at which day, if he come, the plea shall pass between them; and if he do not come, and the proclamation be testified and returned by the sheriff in manner aforesaid, upon his default, admeasurement shall be made: And further, That hereafter no sheriff shall hold pleas of admeasurement of dower or of pasture, but all such writs shall be made returnable before the justices of the supreme court, or in the courts of common pleas in the respective counties.

No sheriff to
hold pleas
thereof.

Adulteress bar-
red of her
dower unless,
&c.

St. Westm. 2.
13 Ed. I. c. 34.

VII. And be it further enacted by the authority aforesaid, That if a wife willingly leave her husband, and go away and continue with her adulterer, and be thereof convicted, she shall be barred forever of action to demand her dower that she might have had of her husband's lands, unless her husband willingly be reconciled to her and permit her to dwell with him; in which case she shall be restored to her action of dower.

A jointress
shall not have
dower.

27 H. 8. c. 10.
14, &c.

VIII. And be it further enacted by the authority aforesaid, That where any man hath purchased, or hath an estate made and conveyed of and in any lands, tenements or hereditaments, unto him and to his wife, and to the heirs of the husband or wife, or to the husband and to his wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to his wife for the term of their lives, or for the term of the life of the said wife; or where any such estate or purchase of any lands, tenements or hereditaments hath been, or hereafter shall be made to any husband and to his wife, in manner and form above expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, or as is before rehearsed, for the jointure of the wife; that then, and in every such case, every married woman having such jointure made or hereafter to be made, shall not claim or have title to have any dower of the residue of the lands, tenements or hereditaments that at any time were her said husbands by whom she hath any such jointure, nor shall demand nor claim her dower of or against them that have the lands and inheritances of her said husband; but if any such woman be lawfully expelled or evicted from her said jointure, or from any part

thereof, without any fraud or covin by lawful entry or action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's lands, tenements or hereditaments, whereof she was before dowable, as the same lands and tenements from which she shall be so evicted and expulsed, shall amount or extend unto.

IX. *And be it further enacted by the authority aforesaid,* That if any wife have, or hereafter shall have any lands, tenements or hereditaments given or assured unto her after marriage, for the term of her life, or otherwise, in jointure, and the said wife after that shall survive her same husband in whose time the said jointure was made or assured unto her, that then the same wife so surviving shall or may, at her liberty, after the death of her said husband, refuse to have and take the lands, tenements and hereditaments so to her given, appointed or assured during the coverture, for term of her life, or otherwise, in jointure; and thereupon shall or may have, ask, demand and take her dower, by writ of dower or otherwise, according to the common law, of and in all such lands, tenements and hereditaments as her husband was and stood seised of any estate of inheritance, at any time during the coverture.

A woman to make her election of a jointure after marriage, or her dower.

27 H. 8. c. 10.

X. *And be it further enacted by the authority aforesaid,* That the wife of every person who shall hereafter be attainted, convicted or outlawed of any treason, petty treason, misprision of treason, murder or felony whatsoever, shall be endowable and enabled, if she survive her husband, to demand, have and enjoy her dower, in like manner and form as if her husband had not been attainted, convicted or outlawed.

Attainder of the husband no bar to her dower.

1 Ed. 6. c. 12 § 17, but otherwise 7 § 8 & 6, Ed. 6. c. 11 § 13.

XI. *And be it further enacted by the authority aforesaid,* That whosoever and whensoever any woman shall be ravished, and after such rape do consent to the ravisher, as well the ravisher as she that is ravished, and every of them shall, from thenceforth, be disabled, and by the same deed be unable to have or challenge any inheritance, dower, jointure, joint-feeoffment, or joint-purchase, after the death of their husbands and ancestors; and that in this case the next of blood of the ravisher, or of her who is ravished, to whom such inheritance, dower, jointure, joint-feeoffment, or joint-purchase, ought to revert, remain or fall after the death of the ravisher, or of her that is ravished, shall have title immediately: That is to say, After the rape to enter upon the ravisher, or her that is ravished, and their assigns and tenants, in the same inheritance, dower, jointure, joint-feeoffment, or joint-purchase, and to hold the same in state of inheritance.

If a woman be avished & consent to the ravisher, neither shall be entitled to any inheritance, dower or jointure.

6 R. 2. st. 1. c. 6.

[A revised bill was prepared and laid before the legislature including the foregoing and the two following acts, but owing to a difference of opinion between the Senate and Assembly as to some of its provisions, it was lost.—The Revisors have however thought proper (though out of the order of time) to publish together *all the acts* on the same subject.]

CHAP. XVII.

*An ACT relative to Dower in certain Cases therein mentioned.*Twenty-Ninth
Session.

Passed February 20, 1806.

[W. v. 4. 334.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That no widow, whose husband was convicted and attainted of adhering to the enemies of this state, in and by the act, entitled, "An act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this state, and for declaring the sovereignty of the people of this state, in respect to all property within the same," and no widow whose husband was convicted in pursuance of the act aforesaid, in the supreme court of judicature, or at any court of oyer and terminer, or general or quarter sessions of the peace, of all or either of the offences in the said act specified, shall be endowed of any lands whereof the husband was seised at the time of such conviction, or at any time before: *Provided always,* That nothing in this act contained, shall be construed to affect the claims of any such widow, whose husband died before the passing of this act.

3 John. ca. 27.

CHAP. CLXVIII.

*An Act supplementary to an Act, passed the twenty-sixth day of January, one thousand seven hundred and eighty-seven, relative to Dower.*Twenty-Ninth
Session.

Passed April 7, 1806.

[W. v. 4. 616.]

Preamble.

WHEREAS the laws of this state relative to Dower are insufficient, inasmuch as they do not provide an effective mode of proceeding in behalf of an heir or heirs, guardians of minor children, or other proprietors or owners of land, on neglect of the widow to demand her dower within the forty days prescribed by law, or at any time thereafter, to the great disadvantage of such heir or heirs, guardians of minor children, or other proprietors or owners:

I. *BE it therefore enacted by the people of the state of New-York, represented in Senate and Assembly,* That a widow shall and may be at liberty, at any time during her life, to make demand of her dower agreeably to the act hereby amended: *Provided,* that dower of any lands sold by the husband shall be according to the value of the lands, exclusive of the improvements made since the sale.

II. *And be it further enacted,* That it shall and may be lawful for any such heir or heirs, guardians of minor children, or other proprietors or owners at any time after the expiration of the forty days aforesaid, to give unto such widow, or her attorney, thirty days notice in writing, in the presence of two freeholders, that she make demand of her dower within ninety days thereafter, of the estate of her said husband, deceased, or of such part thereof as she shall be notified.

III. *And be it further enacted,* That in case any such widow, or her attorney, shall neglect or refuse to make a demand within the time above mentioned, it shall and may be lawful for the surrogate of the county where the land lies, upon the petition of any

Widow may demand at any time during her life. 3 John. ca. 29. What to be that of the widow on lands sold by her husband.

Heirs, &c. may give notice to widow to demand.

Admessurers of dower, in what case surrogate to appoint.

such heir or heirs, guardians of minor children, or other proprietors or owners, to issue an order to three disinterested freeholders of the said county, to be by him appointed for that purpose, to admeasure and lay off, as speedily as may be, one third part of the lands thus petitioned for admeasurement, as the widow's dower; allowing to the admeasurers aforesaid, two dollars per day for their services, which admeasurers shall be sworn before the surrogate, or any other person authorised to administer oaths, faithfully and honestly to execute the trust herein reposed in them respectively

And be it further enacted, That the surrogate shall be entitled, for such order, to the sum of one dollar, and for recording the report of the admeasurers, and for such other proceedings as may be necessary, such fees as are allowed by law, for similar services in the usual business of his office.

V. *And be it further enacted,* That where any testator or intestate, shall have been possessed of lands wild and unproductive, it shall and may be lawful for the admeasurers aforesaid, to take into view any improvements made upon any wild lands by any such heir or heirs, guardians of minor children, or other proprietors or owners, and award the said improvements within the bounds of that part of the estate which shall be allotted to such heir or heirs, guardians of minor children, or other proprietors or owners.

VI. *And be it further enacted,* That it shall be the duty of the said admeasurers to make a full and ample report of their proceedings, with the distances and courses of the lands so admeasured and allotted to the widow, and amount of their charges, to the said surrogate, which shall be entered at large on the records of his office, in a book to be provided by him for that purpose.

VII. *And be it further enacted,* That it shall and may be lawful for the widow, or her attorney, at the expiration of thirty days after the said report shall be so recorded, to enter and take possession of said lands so awarded, during the term of her natural life and no longer.

VIII. *And be it further enacted,* That all taxes and charges whatsoever, accruing on the said lands so awarded subsequent to the time of taking possession, shall be paid by the widow, or her attorney, during the term of her natural life.

IX. *And be it further enacted,* That it shall be lawful for the supreme court and court of common pleas of the county in which the lands lie, to proceed and cause admeasurement of dower to be made by orders of the said courts, in the same manner as the surrogate is by this act authorized to make admeasurement as aforesaid.

X. *And be it further enacted,* That it shall be lawful for any widow, heir or heirs, guardians of minor children, or other proprietors or owners, who shall conceive himself or herself aggrieved by any proceedings under this act, by the surrogate, or any court of common pleas, at any time within thirty days after filing the report of the said freeholders, to give notice in writing of the causes of complaint, and of his or her intention to apply to the next supreme court, to be holden after such notice, for relief, which court shall review the proceedings and do therein what shall be just.

9 John. Rep.
245.
6 John. Rep.
231.

Surrogate's
fees.

Land on
which heirs,
&c have made
improvements,
admeasurement
how made.

3 John. Rep.
484.

Admeasurers
to make re-
port to the
surrogate.

Widow or her
attorney may
take possession
of lands
awarded her
after 30 days.

Widow to pay
taxes on land
awarded her.

Admeasurement
of dower,
supreme
court and
common
pleas, their
powers in.

Appeal from
surrogate and
common
pleas, allowed
to supreme
court.

Costs by whom
taxed, and by
whom paid.

XI. *And be it further enacted*, That all costs arising and accruing on any proceedings under this act, shall be taxed by the surrogate or judge of the court in which the proceedings may be had, and paid by the person or persons applying for the same.

Widow, in
what case she
may apply for
admeasurement
of dower.

XII. *And be it further enacted*, That if any widow shall not have her dower set off or assigned to her within forty days after the decease of her husband, by the heir or heirs, guardians of minors, or other owners or proprietors of lands in which she shall have a right of dower, it shall and may be lawful for such widow to apply to the surrogate of the county, or to the supreme court, or the court of common pleas of the county in which such land shall lie, who, upon such application, shall cause an admeasurement of such dower in the manner prescribed in this act.

TENTH SESSION.

CHAP. VI.

An ACT for preventing Waste.

Passed 30th January, 1787.

[V.S. v. 2. 639. J.&V. v. 2. 7. Gr. v. 1. 197. K.&R. v. 1. 55.]

A guardian
not to suffer
or make any
waste :
9. H. 3. c. 4 &
5.
52 H. 3. c. 17.
3. Ed. 1. c. 21.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That no guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, or of those things that he hath, or may have in his custody, but shall safely keep the same inheritance to the use of the said heir, and keep up and sustain the houses, gardens and other things pertaining to the same lands, by and with the issues and profits thereof, and shall deliver the same to his ward, when he cometh to his full age, in as good order and condition at least as such guardian received the same ; and shall answer to such heir for the residue of the issues and profits of the same inheritance, by a lawful account, saving to the same guardians their reasonable charges and expenses. And if any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the same custody, and shall recompense the ward thrice so much as the damages shall be taxed at by the jury.

9 H. 3. c. 5.
6. Ed. 1. c. 2.
28 Ed. 1. c.
18.

Liable to treble
damages
for such waste.
6 Ed. 1. c. 5.

Tenants not
to suffer or
make any
waste.
52 H. 3. c. 23.
11. H. 4. c. 5.
6 Ed. 1. c. 5.

II. *And be it further enacted by the authority aforesaid*, That no tenant for life or years, or for any other term, shall during the term, make or suffer any waste, sale, or destruction of houses, gardens, orchards, lands or woods, or any thing belonging to the tenements demised, without special license in writing, making mention that he may do it.

Action of
waste given in
certain cases.
6. Ed. 1. c. 5.

To recover
the place
wasted & treble
damages :
6 Ed. 1. c. 5.

III. *And be it further enacted by the authority aforesaid*, That from henceforth any person may have a writ of waste out of the chancery, against him or her who holdeth by courtesy, or otherwise, for term of life or for term of years or other term, or a woman in dower as well as against guardians. And whoever shall be convicted of waste, shall lose the thing or place wasted, and shall recompense thrice so much as the damages shall be taxed at by the jury.

IV. *And be it further enacted by the authority aforesaid*, That in

all actions of waste, if the defendant come not at the return of the original writ, he shall be attached; and if he come not at the return of the attachment, he shall be distrained; and if he come not after the distress, or if he come and afterwards make default, the sheriff shall be commanded, that in his proper person he take with him twelve good and lawful men of his county, and go to the place wasted, and enquire of the waste done, and return an inquest; and after the inquest returned, the plaintiff shall have judgment to recover the place wasted, and treble the damages found by the inquest.

Process there-
in.

V. *And be it further enacted by the authority aforesaid*, That where two or more do, or shall hold any lands, tenements, woods, fishing, or other such thing in common as parceners, tenants in common, or joint-tenants, wherein none knoweth his or her several part, and some or one of them do waste against the mind of the other, an action shall lie by a writ of waste; and when it shall come unto judgment, the defendant shall chuse either to take his or her part in a place certain by the sheriff with a jury to be assigned, or else he or she shall grant to take nothing from thenceforth, in the same lands, tenements, woods, fishings, or other such thing, but as his or her partners will take; and if he or she chuse to take his or her part in a place certain, the same shall be assigned him or her in the part wasted, as it was before he or she committed the waste. But if the defendant shall not chuse to take his or her part, in a place certain, or if the waste exceed his or her proportion, the plaintiff shall recover against such defendant, such damages as shall be found by the jury or inquest.

Proceedings
between par-
ceners, te-
nants in com-
mon and joint
tenants.

13 Ed. 1. c. 32.

VI. *And be it further enacted by the authority aforesaid*, That every heir in whose ward soever he or she be, and whether he or she be in ward or not and as well within age as of full age, shall have his or her recovery by a writ of waste, for waste and destruction made in lands and tenements, of his or her inheritance, as well in the time of his or her ancestor or ancestors, as at any other time after the inheritance descended or come to him or her, and shall be answered unto therefore, and he or she shall recover the tenements wasted, and treble damages as aforesaid.

Heir may have
action of
waste.

20 Ed. 1. St. 2.

VII. *And be it further enacted by the authority aforesaid*, That where any tenant for term of life, or for another's life, or for term of years, or any other term, hath or shall let or grant his or her estate in the lands and tenements demised to or held by him or her, to any person or persons, and shall still continue to occupy the same lands and tenements, or take the profits thereof, and shall commit or suffer waste and destruction in the same lands and tenements, to the disinheritance of him, her or them in the reversion, he, she or they to whom the reversion doth or shall appertain, may, in such case, have and maintain a writ of waste against the said tenant for term of life, or of another's life, or for term of years, or other term, and recover against him or her the place wasted, and his, her or their treble damages for the waste done, if the said tenant was punishable, of or for waste before he or she leased or granted over his or her estate as aforesaid, but not otherwise.

Tenants liable
to waste after
granting their
estates, if they
take the pro-
fits.

11. H. 6. c. 5.

Passed 8th February, 1787.

[V.S. v. 1. 197. J.&V. v. 2. 20. Gr. v. 1. 310. K.&R. 1. 57.]

Rate of interest.

23 H. 3. c. 5.

3 H. 7. c. 5. 6.

13 Ed. c. 2.

37 H. 8. c. 9.

5 K. 6. Ed. c. 20.

21. Jac. 1. c. 17.

12. Carr. 2. c. 13.

Securities for money declared void.

12 Ann. st. 2. c. 16.

Payment of money may be recovered back.

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That no person or persons whomsoever, shall hereafter take, directly or indirectly, for loan of any monies, wares, merchandize, or other things whatsoever, above the value of seven pounds for the forbearance of one hundred pounds, for one year, and so after that rate for a greater or less sum, or for a longer or shorter time; nor take any bond, bill, note or security whatsoever for payment of money to be lent, or to be due or payable by any means whatsoever, whereupon or whereby there shall be reserved, or taken, or included, above the rate of seven pounds in the hundred, as aforesaid. And further, That all bonds, bills, notes, contracts and assurances whatsoever, and all deposits of goods, or other things whatsoever, for payment, of any principal or money to be lent, or covenanted or agreed to be paid, upon or for any usury, whereupon or whereby there shall be reserved, or taken, or secured, or agreed to be reserved or taken, above the sum of seven pounds in the hundred, as aforesaid, shall be utterly void.

II. And be it further enacted by the authority aforesaid, That if any person or persons whomsoever, shall hereafter take, accept, or receive, by way or means of any corrupt bargain, loan, exchange, chevizance, shift, or interest of any money, wares, merchandize, or any other thing or things whatsoever, or by any deceitful ways or means, or by any covin, engine, or deceitful conveyance, for the forbearing, or giving day of payment for one whole year, of or for his, her or their money, or other thing, above the sum of seven pounds, either in money, goods, or any other thing whatsoever, for the forbearing of one hundred pounds, for one year, and so after that rate for a greater or less sum, or for a longer or shorter time; the person or persons so paying any such sums of money, or delivering any such goods, or other thing, his, her or their executors or administrators, shall be at liberty, at any time within one year then next, to sue for and recover the money so paid, or the value of the goods or other thing so delivered, above the rate aforesaid, or any part thereof, from the person or persons who shall have taken, accepted or received the same, or from his, her or their executors or administrators, with costs of suit, by action of debt founded on this act, to be prosecuted in any court of record having cognizance of the same; in which actions it shall be sufficient for the plaintiff or plaintiffs, to alledge, that the defendant or defendants, or his, her or their testator or intestate, is or are, or were indebted to the plaintiff or plaintiffs, or to his, her or their testator or intestate, in the sum so paid, or the value of the goods or other things so delivered, over and above the rate aforesaid, whereby an action accrued to the plaintiff or plaintiffs, according to the form of the statute, entitled, *An act for preventing Usury*, to demand and have of the defendant or defendants, or his, her or their testator or intestate, the said sum; without setting forth the special mat-

The English Statutes against Drury are set forth
it lays in the appendix to Howden on Drury -

[performed, & paid - s. 27
see 1 Campbell. N. P. 163]

[rate - s. (40 & am) - 2, it.]

ter. And in case the person or persons, so paying any such sum or sums of money, or so delivering any such goods or other thing, shall not, within the time aforesaid, really and *bona fide*, and without covin or collusion, commence his, her or their suit or action for the money so paid or for the value of the goods or other things so delivered as aforesaid, or shall suffer such suit or action to be delayed or discontinued, then it shall and may be lawful for any other person or persons, within one year after such neglect, discontinuance or delay, by any such action or suit as aforesaid, to sue for and recover the same in manner aforesaid, with costs of suit, against the person or persons who shall have taken, accepted or received the same, his, her or their executors or administrators; the one moiety thereof to the use of the person or persons who will prosecute for the same with effect, and the other moiety thereof to the use of the poor of the town or place where the offence shall be committed.

After one year any person may sue for the same.

III. *And be it further enacted by the authority aforesaid*, That no scrivener, broker, solicitor, or driver of bargains or contracts, shall hereafter take or receive, directly or indirectly, any sum or sums of money, reward, goods, or other thing, for brokage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money, over and above the rate or value of ten shillings, for the loan or forbearance of one hundred pounds, for one year, and so in proportion for a greater or less sum; or above three shillings for making or renewing any bond, bill, note, or other security, for the loan or forbearance thereof, or for any counter bond, bill or other security concerning the same. And in case any scrivener, broker, solicitor, or driver of bargains or contracts, or any other person or persons, shall take, accept or receive, directly or indirectly, any sum or sums of money, reward, goods or other thing, or any deposit or security, for brokage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money, over and above the rate or value of ten shillings, for the loan or forbearance of one hundred pounds, for one year, and so in proportion for a greater or less sum: the person or persons so paying such sum or sums, or delivering or depositing any such goods, or other thing, above the rate aforesaid, or his, her or their executors or administrators, shall be at liberty, at any time within one year after paying or delivering the same, to sue for and recover the money so paid, and the value of the goods or other thing so delivered or deposited above the rate aforesaid, or any part thereof, from the person or persons who shall have taken, accepted or received the same, or from his, her or their executors or administrators, with costs of suit, by action of debt, founded on this act, to be prosecuted in any court of record having cognizance of the same; in which actions it shall be sufficient for the plaintiff or plaintiffs to allege, that the defendant or defendants, or his, her or their testator or intestate, is or are, or were indebted to the plaintiff or plaintiffs, his, her or their testator or intestate, in the sum so paid, or the value of the goods or other thing so delivered or deposited, over and above the rate aforesaid, whereby an action accrued to the plaintiff or plaintiffs, or to his, her or their testator or intestate, according to the form of the statute, entitled, *An act for preventing usury*, to demand and

Premium to brokers.

Payment of more may be recovered back:

After one year
any person
may sue for
the same.

have of the defendant or defendants, or his, her or their testator or intestate, the said sum, without setting forth the special matter. And in case the person or persons so paying any such sum or sums of money, or delivering or depositing any such goods, or other thing, or his, her or their executors or administrators, shall not within the time aforesaid, really and *bona fide*, or without fraud or collusion, commence his, her or their suit or action for the money so paid, or for the value of the goods or other things so delivered or deposited as aforesaid, over and above the rate aforesaid, or shall suffer such suit to be delayed or discontinued; then it shall and may be lawful for any other person or persons, within one year after such neglect, discontinuance or delay, by any such action or suit as aforesaid, to sue for and recover the same in manner aforesaid, with costs of suit, against the person or persons who shall have taken, accepted or received the same, his, her or their executors or administrators; the one moiety thereof to the use of the person or persons who shall prosecute for the same with effect, and the other moiety thereof to the use of the poor of the town or place where the offence shall be committed.

Persons charged with usury to answer bills of discovery.

IV. And for the better discovery of the money, goods or other things so taken, accepted or received as aforesaid, upon or for the loan or forbearance of money, goods, or other things, or for brokerage, soliciting, driving, or procuring the loan or forbearance of any sum or sums of money; *Be it further enacted by the authority aforesaid*, That all and every the person or persons who, by virtue of this act, shall or may be liable to be sued for the same, shall be obliged and compellable to answer, upon oath, such bill or bills as shall be preferred against him, her or them, in the court of chancery, for discovering the sum or sums of money, goods, or other thing, so taken, accepted or received, as aforesaid. *And further*, That upon the discovery and re-payment or return of the money, goods, or other thing so to be discovered, the person or persons who shall so discover and repay or return the same as aforesaid, with costs of suit, shall be acquitted and discharged from any further or other punishment, forfeiture or penalty, which he, she or they may have incurred or become liable to, by taking, accepting or receiving such money, goods or other thing so discovered, and repaid or returned as aforesaid.

[FIFTH SECTION OBSOLETE.]

CHAP. XXII.

An ACT concerning Murder.

Passed 14th February, 1787.

[J.&V. v. 2. 46. Gr. v. 1. 336. K.&R. v. 1. 60.]

Repeating declared murder.

22 H. 3. c. 25.

3 H. 7. c. 1.

22 Geo. 3. c. 37.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That all wilful killing by poisoning of any person or persons, done, perpetrated or committed, or that at any time hereafter shall be done, perpetrated or committed, shall be adjudged, taken, and deemed wilful murder of malice prepense; and the of-

senders therein, their aiders, abettors, procurers and counsellors, shall suffer death, and forfeit, in every behalf, as in other cases of wilful murder of malice prepense.

II. *And be it further enacted by the authority aforesaid,* That if any person or persons, shall stab or thrust any person or persons, that hath not then any weapon drawn, or that hath not then first stricken the party who shall so stab or thrust, so as the person or persons so stabbed or thrust, shall thereof die, within the space of six months then next following, although it cannot be proved that the same was done of malice aforethought, every such unlawful killing shall be adjudged, taken and deemed, wilful murder: And the offenders therein, their aiders, abettors, procurers and counsellors, shall suffer death, and forfeit, in every behalf, as in other cases of wilful murder of malice prepense. But this shall not extend to any person or persons who shall kill any person or persons in his, her or their own defence, or by misfortune, or in any other manner than as aforesaid; nor to any person or persons who, in keeping and preserving the peace, shall chance to kill any person or persons, so as such killing be not done wittingly, willingly, and of purpose, under pretext and colour of keeping the peace; nor to any person or persons, who in chastising or correcting his, her or their child, or servant, shall, contrary to his, her or their intent and purpose, chance to kill such child or servant.

III. *And be it further enacted by the authority aforesaid,* That when a servant killeth his master, or a wife her husband, of malice prepense, such offences shall be deemed and adjudged to be, and shall be punished as murder.

IV. *And be it further enacted by the authority aforesaid,* That if any evil disposed person or persons shall attempt feloniously to rob or murder any person or persons, in or nigh any highway, or in his or their mansion-house or dwelling-place, or shall feloniously attempt to break any dwelling-house in the night, and shall happen, in his or their being in such their felonious attempt, to be slain by him, her or them, whom the said evil-doers shall so attempt to rob or murder, or by any person or persons being in the dwelling-house, which the same evil-doers shall attempt burglariously to break by night; then and in every such case, if the person or persons so happening to kill any such person or persons, so attempting to commit any such murder, robbery or burglary, shall be indicted or appealed* of or for the death of such evil-disposed person or persons, so attempting to commit murder, robbery or burglary, as aforesaid, if it be found by verdict, that the party so indicted or appealed, killed such evil-disposed person or persons in such felonious attempt, the party so indicted or appealed, shall not forfeit or lose any thing for the death of such evil-disposed person, in manner aforesaid slain, but shall be thereof, and for the same, fully acquitted and discharged, in like manner as the same person or persons should be, if he, she or they were lawfully acquitted of the death of the said evil-disposed person or persons.

V. *And be it further enacted by the authority aforesaid,* That upon all indictments and appeals of or for the death of any per-

Stabbing & declared murder.

1. Jac. 1. c. 12.

Except in self defence or misfortune.

Servant killing his master, or wife her husband, declared murder.

Peck treamth by 25. Ed. 3. c. 5. c. 2.

Persons killing others, attempting to rob or murder, to be acquitted. 24. H. 8. c. 7.

* Prosecutions of felony and mayhem by appeal abolished: See act, 24th Geo. 2. entitled "Act to repeal the acts and parts of acts therein mentioned."

Persons killing in self defence or by

misfortune to be acquitted.

6. Ed. 1. c. 9.

Persons killing others in apprehending felons, or in defence of husband, &c. or in suppressing riots, &c. to be acquitted.

24 H. 8. c. 5.

son, or persons, if it be found by verdict, that the party indicted or appealed, killed the person or persons for whose death he, she or they is, are, or shall be indicted or appealed, in his, her or their own defence, or by misfortune, then, and in every such case the party so found by verdict to have killed the person or persons for whose death, he, she or they is, are, or shall be indicted or appealed, in his, her or their own defence, or by misfortune as aforesaid, shall not forfeit or lose any thing for the death of the same person or persons, so killed, but shall be thereof, and for the same, fully acquitted and discharged.

VI. *And be it further enacted by the authority aforesaid,* That upon all indictments and appeals, of or for the death of any person or persons, if it be found by verdict, that the party indicted or appealed happened to kill the person or persons for whose death he, she or they is, are, or shall be indicted or appealed, in attempting or endeavoring by any lawful ways or means, to apprehend, take or arrest the same person or persons, for any treason or felony done and committed, or hereafter to be done and committed, or in the lawful defence of his, her or their husband, wife, parent, child, master, mistress or servant, or in suppressing any riot, or in keeping and preserving the peace, or in lawfully chastising or correcting his, her or their child or servant; then, and in every such case, the party so found by verdict to have killed the person or persons for whose death he, she or they is, are, or shall be indicted, or appealed, shall not forfeit or lose any thing for the death of the same person or persons so killed, but shall thereof, and for the same, be fully acquitted and discharged.

CHAP. XXVIII.

An ACT concerning Wrecks of the Sea, and giving remedy to Merchants and others, who be robbed, or whose Goods shall be lost on the Sea.

Passed 16th February, 1787.

[J.&V. v. 2. 53.—Gr. v. 1. 345.—K.&R. v. 1. 62.]

Vessels and goods wrecked now to be disposed of.

Not adjudged wreck if any thing escapes alive, by 3 Ed. 1. c. 4.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That if a ship, vessel or boat, or any kind of goods, wares or merchandize, shall be cast by the sea on the land, neither such ship, vessel or boat, nor any thing in them, nor such goods, wares or merchandize shall be adjudged wreck; but the ship, vessel or boat, and every thing therein contained, and such goods, wares and merchandize, shall be saved and kept by the view of the sheriff or coroner, or other person appointed for that purpose, who shall cause the same to be appraised, and safely keep them, so that if any person within a year and a day, sue for those goods, and prove that they were his, or lost in his keeping, they shall be restored to him without delay, upon his paying the charges and expences of saving and keeping the said goods; but if not, they shall remain to the people of this state, and shall, after the expiration of the said year and day, be sold at public vendue, by the sheriff, coroner, or other person appointed for that

purpose, who shall have found or seized the same, who shall account for the same at the exchequer, deducting the charges and expences of saving and keeping the same, and of such sale : And he that doth otherwise, and is thereof convicted, shall yield damages to the party grieved, and shall be punished by fine or imprisonment, or both, at the discretion of the court or justices, before whom he shall be convicted.

And further, That if any merchant, citizen or stranger, or any other, be robbed of his goods upon the sea, and the goods come into any part of this state, and he will sue to recover the said goods, he shall be received to prove the said goods to be his own, by his marks or by his cocket, or by good and lawful merchants, citizens or strangers, or others ; and upon such proof, the same goods shall be delivered to him without delay.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the person administering the government of this state for the time being, by and with the advice and consent of the council of appointment, from time to time, by commission under the great seal of this state, to appoint such and so many proper persons in each of the counties of this state, bordering on the sea, as they may think necessary, to aid and assist all such ships and vessels as may happen to be stranded on the coasts in the same counties ; and such persons so appointed, shall be and hereby are respectively authorised and required to give all possible aid and assistance to all such ships and vessels, and to the people on board of the same, and to use their utmost endeavours to save the same, and to save, preserve and secure, for the purposes aforesaid, the cargoes of all such ships and vessels, and all goods and chattels whatsoever, which may at any time be cast by the sea upon the land ; and to employ such and so many men for the purpose, as they may respectively think proper. And the sheriff, coroner, or other person so appointed as aforesaid, and all persons by them employed, shall have a reasonable allowance out of the same goods so saved and preserved, for saving, preserving and keeping the same. And such sheriff, coroner, or other person, so appointed as aforesaid, shall and may detain the same goods until payment thereof ; and in case any dispute shall arise concerning such allowance, the same shall be settled and adjusted by any two or more justices of the peace, dwelling in or near the town or place where the said goods shall be found or saved. And if any person shall take away any goods whatsoever, out of any ship or vessel stranded as aforesaid or any goods cast by the sea upon the land, or found in any bay or creek, and not deliver the same goods to the sheriff or coroner of the county where the same shall be found, or to one of the persons appointed as aforesaid, within forty-eight hours after taking the same, or shall secret any such goods, or convert them to his own use, every person so offending shall yield double damages to the owner of such goods, to be recovered, with costs of suit, in any court having cognizance thereof, and be further punished by fine or imprisonment, or other corporal punishment, at the discretion of the court, not extending to life or limb. And it is hereby made the duty of every sheriff, coroner, justice of the peace, and constable,

Goods stolen
at sea to be
restored.

Persons to be
appointed to
aid vessels in
distress.

12 Ann. st. 3.
c. 18.
26 Geo. 2. c. 19.

Their allow-
ance.

Penalty for
secretting goods.

Officers to
prevent offend-
ers.

and the persons so appointed as aforesaid, to present all offences and offenders against this act, at the sessions of the peace in their respective counties; and the justices of the peace in their sessions, are hereby authorised and required to hear and determine the same.

CHAP. XXXVI.

An ACT concerning Tenures.

Passed 20th February, 1787.

[J.&V. v. 2. 67.—Gr. v. 1. 359.—K.&R. v. 1. 64.]

Freeholders
may alien
their lands.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That it shall for ever hereafter be lawful for every freeholder to give, sell or alien the lands or tenements whereof he or she is, or at any time hereafter shall be, seised in fee simple, or any part thereof, at his or her pleasure, so always that the purchaser shall hold the lands or tenements so given, sold or aliened, of the chief lord, if there be any, of the same fee, by the same services and customs by which the person or persons making such gift, sale or alienation, before held the same lands or tenements. And if such freeholder give, sell or alien only a part of such lands or tenements to any, the feoffee or alienee shall immediately hold such part of the chief lord, and shall be forthwith charged with the services for so much as pertaineth or ought to pertain to the said chief lord, for the same parcel, according to the quantity of the land or tenement so given, sold or aliened; and so in this case, the same part of the service shall remain to the lord, to be taken by the hands of the feoffee or alienee, for which he or she ought to be attendant and answerable to the same chief lord, according to the quantity of the land or tenement given, sold or aliened, for the parcel of the service so due.

20 Ed. 1. st. 1.
c. 1, 2.

13 Car. 2. c. 24.

Charges inci-
dent to knight
service, and

II. *And be it further enacted by the authority aforesaid,* That all wardships, liveries, primer seisins and ousterlemains, values and forfeitures of marriage, by reason of any tenure by knights service, and all mean rates, and all other gifts, grants and charges incident or arising for or by reason of wardships, liveries, primer seisins or ousterlemains, shall be, and hereby are declared to be taken away and discharged from the thirtieth day of August, in the year of our Lord one thousand six hundred and sixty-four: And that all fines for alienations, seisures and pardons for alienations, tenure by hom-age, and all charges incident or arising for or by reason of wardship, livery, primer seisin, ousterlemain, or tenure by knights service, escuage, and also relief, and aid pur file marrier, and pur fair fits chivalier, and all other charges incident thereunto, shall be, and hereby are likewise declared to be taken away and discharged from the said thirtieth day of August, in the year of our Lord one thousand six hundred and sixty-four; and that all tenures by knights service, and by knights service in capite, and by soccage in capite, and the fruits and consequents thereof happened, and which shall or may hereafter happen or arise thereupon or thereby, shall

20 H. 3. c. 7.
12 Car. 2. c. 24.
28 Ed. 1. c. 19.

Fines for ali-
enations, and
1 Car. 1. c. 3.
13 Car. 2. c. 24.
§ 2.
27. H. 8. c. 30.
§ 12, 13.
3 Ed. 1. c. 36.
26 Ed. 1. c. 6.
25 Ed. 1. st. 3.
c. 11

Tenures by
knight service
abolished.
16 Car. 1. c. 20.
12 Car. 2. c. 24.
Colonial char-

be and hereby are declared to be taken away and discharged, and forever abolished; any law, statute, custom or usage to the contrary thereof in any wise notwithstanding.

III. *And be it further enacted by the authority aforesaid*, That all tenures of any honors, manors, lands, tenements or hereditaments, or of any estate of inheritance at the common law, held either of the king or of any other person or persons, bodies politic or corporate, at any time before the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, are hereby declared to be turned into *free and common soccage*, to all intents and purposes, and shall be construed, adjudged and deemed to be *free and common soccage* from the time of the creation thereof, and forever thereafter, and that the same honors, manors, lands, tenements and hereditaments, shall for ever hereafter stand and be discharged of all tenure by *homage, escuage, voyages royal and charges* for the same, *wardships* incident to tenure by *knights service*, and *values and forfeitures of marriage*, and all other *charges* incident to tenure by *knights service*, and of and from *relief, aid pur file marrier*, and *aid pur fair fitz chivalier*; any law, statute, usage or custom to the contrary in any wise notwithstanding.

IV. *And be it further enacted by the authority aforesaid*, That all conveyances and devises of any manors, lands, tenements or hereditaments, at any time heretofore made, shall be expounded to be of such effect, as if the same manors, lands, tenements and hereditaments had been then held, and continued to be holden in *free and common soccage* only; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding.

V. *Provided always, and be it further enacted by the authority aforesaid*, That this act, or any thing herein contained, shall not take away, nor be construed to take away or discharge, any rents certain, or other services incident or belonging to tenure in common soccage, due or to grow due to the people of this state, or any mean lord, or other private person, or the fealty or distresses incident thereunto.

VI. *And be it further enacted by the authority aforesaid*, That the tenure upon all gifts, grants and conveyances heretofore made, or hereafter to be made, of any manors, lands, tenements or hereditaments, of any estate of inheritance, by any letters patent under the great seal of this state, or in any other manner, by the people of this state, or by the commissioners of forfeitures, shall be and remain *allodial*, and not *feudal*, and shall for ever hereafter be taken and adjudged to be and continue in free and pure *allodium* only; and shall be for ever discharged of all *wardship, value and forfeiture of marriage, livery, primer seisin, ousterlemain, relief, aid pur file marrier, aid pur fair fitz chivalier, rents, renders, fealty* and all other *services* whatsoever; any law, statute, reservation, custom or usage to the contrary hereof in any wise notwithstanding.

ter of rights,
Sec. 3 W. & M.
—En.—Ed. 4.

Estates by inheritance held in free and common soccage.

12 Car. 2. c. 24.

Colonial character of rights,
Sec. 3 W. & M.
—En.—Ed. 4.

Conveyances and devises how expounded.

12 Car. 2. c. 24.

This act not to affect rents or services incident to common soccage.

12 Car. 2. c. 24.

Tenure of lands granted by the state allodial and not feudal.

2 Bl. Com. 47.

12 Car. 2. c. 24.

CHAP XXXVII.

An ACT concerning Uses.

Passed 20th February, 1787.

[J.&V. v. 2. 68.—Gr. v. 1. 361.—K.&R. v. 1. 66.]

The possession of lands to follow the use.

27. H. 8. c. 10.
1. R. 3. c. 1.
19. H. 7. c. 15.

1. *BE it enacted by the people of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That where any person or persons stand or be seised, or at any time hereafter shall stand or be seised of and in any manors, messuages, lands, tenements, rents, services, reversions, remainders, or other hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will, or otherwise, by any manner of means whatsoever ; in every such case, all and every such person and persons, and bodies politic, that have, or hereafter shall have, any such use, confidence or trust, in fee simple, for term of life, or of years, or otherwise, or any use, confidence or trust, in remainder or reversion, shall from henceforth stand, and be seised, deemed and adjudged, in lawful seisin, estate and possession of and in the same manors, messuages, lands, tenements, rents, services, reversions, remainders and hereditaments, with their appurtenances, to all intents, constructions and purposes in the law, of and in such like estates, as they had, or shall have, in use, trust or confidence, of or in the same ; and that the estate, title, right and possession that was or shall be in such person or persons that were or hereafter shall be seised of any lands, tenements or hereditaments, to the use, confidence or trust, of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him, her or them, that have or hereafter shall have such use, confidence or trust, after such quality, manner, form and condition, as they had before, in or to the use, confidence or trust, that was or shall be in them. *And further,* That where divers persons be, or hereafter shall be jointly seised of and in any lands, tenements, rents, reversions, remainders or other hereditaments, to the use, confidence or trust, of any of them so jointly seised, in every such case the person or persons who have, or hereafter shall have, any such use, confidence or trust, in any such lands, tenements, rents, reversions, remainders or hereditaments, shall from henceforth have, and be deemed and adjudged to have, only to him or them that have, or hereafter shall have, such use, confidence or trust, such estate, possession and seisin of and in the same lands, tenements, rents, reversions, remainders and other hereditaments, in like nature, manner, form, condition and course, as he or they had before, in the use, confidence or trust, of the same lands, tenements, rents, reversions, remainders or hereditaments ; saving and reserving to all and singular persons and bodies politic, their heirs and successors, other than the person or persons who be seised, or hereafter shall be seised of any lands, tenements or hereditaments, to any use, confidence or trust, all such right, title, entry, interest, possession, rents and action, as they, or any of them had, or might have had, before the making of this act ; and saving

and reserving also, to all and singular those persons, and to their heirs, who be, or hereafter shall be seised to any use, all such former right, title, entry, interest, possession, rents, customs, services and action, as they, or any of them, might have had, to his or their own proper use, in or to any manors, lands, tenements, rents or hereditaments, whereof they be, or hereafter shall be seised, to any other use, as if this act had never been made.

Saving to others their right.

II. *And be it further enacted by the authority aforesaid,* That where any person or persons, stand and be seised, or hereafter shall stand and be seised of and in any lands, tenements or hereditaments, in fee simple, or otherwise, to the use or intent that some other person or persons shall have and perceive yearly to them, and to his or their heirs, one annual rent, of ten pounds, or more or less, out of the same lands, tenements and hereditaments, and some other person or persons one other annual rent to him or them and their assigns, for term of life or years, or for some other special time, according to such intent and use as heretofore hath been, or hereafter shall be declared, limited and made thereof, in every such case, the same persons, their heirs and assigns, and every of them, who have such use and interest, to have and perceive any such annual rents, out of any lands, tenements or hereditaments, shall be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest or use of the said rent or profit, and as if a sufficient grant or other lawful conveyance had been made and executed to them, by such as were or shall be seised, to the use or intent of any such rent to be had, made or paid, according to the very trust and intent thereof; and that all and every such person and persons as have or hereafter shall have any title, use and interest, in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent, and in their own names, make avowries, or by their bailiffs or servants make cognizances and justifications, and have all other suits, entries and remedies for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress, re-entry or otherwise, according to such conditions, pains, or other things limited and appointed, upon the trust and intent, for payment or surety of such rent.

The person to whose use rent is reserved deemed to be in possession, and may distrain, &c.

27. H. 8. c. 10.

III. *And be it further enacted by the authority aforesaid,* That all and singular person and persons, and bodies politic, which have or shall have any estate unto them executed, of and in any lands, tenements or hereditaments, by the authority of this act, shall and may have and take the same or like advantage, benefit, voucher, aid-prayer, remedy, commodity, and profit, by action, entry, condition, or otherwise, to all intents, constructions and purposes, as the person or persons seised to their use, of or in any such lands, tenements or hereditaments so executed, had, should, might, or ought to have had at the time of the execution of the estate thereof, by the authority of this act, against any other person or persons, of or for any waste, disscisin, trespass, condition broken, or any other offence, cause or thing, concerning or touching the said lands or tenements, so executed by the authority of this act.

Certui que use to have all remedies as owner.

1.R.2.c.9.
4.H.4.c.7.
11.H.6.c.3.
1.H.7.c.1.
27.H.8.c.10.

Lands liable
to execution
against cestui
que use;

19.H.7.c.15.
29.Car.2.c.3. §
10.

And shall be
assets in the
hands of his
heirs or devi-
sees.

29.Car.2.c.3. §
10.

Grants and
conveyances
good against
the grantors,
&c.

1.R.3.c.1.

IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for every sheriff, and other officer to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for and upon any judgment or recognizance, made or had, or hereafter to be made or had, to do, make and deliver execution unto the party in that behalf suing, of all such lands, tenements, rents and hereditaments, as any other person or persons be, in any manner of wise seised or possessed, or hereafter shall be seised or possessed, to the use or in trust for him, against whom execution is so sued, like as the sheriff or other officer might or ought to have done, if the said party against whom execution is or shall be so sued, had been seised of such lands, tenements, rents, or other hereditaments, of such estate as he is or shall be seised of, in the use or trust, at the time of the said execution sued; and such lands, tenements, rents and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged of all incumbrances of such person or persons as are or shall be so seised and possessed, to the use or in trust for the person against whom such execution is or shall be sued; and if any person entitled to, or having any such use or trust, hath devised, or shall devise the same by his last will, or hath died or shall die intestate, leaving the same to descend to his heirs, the same shall be liable to the debts of the testator or intestate, and deemed and taken to be assets in the hands of the heirs or devisees, who shall be chargeable for the same, in like manner as they are by law chargeable and liable in cases where lands or tenements descend, or are devised to them, and not otherwise.

V. *And be it further enacted by the authority aforesaid,* That every estate, feoffment, gift, release, grant, lease and confirmation of lands, tenements, rents, services, or hereditaments, made or had, or hereafter to be made or had, by any person or persons, being of full age, of sound mind, at large, and not in duress, to any person or persons, and all recoveries and executions had or made, or to be had or made, shall be good and effectual to him, her or them, to whom it is so made, had, or given, and to all others, to his, her or their use, against the seller, feoffor, donor, or grantor thereof, and against the sellers, feoffors, donors, or grantors, his, her and their heirs, claiming the same only as heir and heirs to the same sellers, feoffors, donors, or grantors, and every of them, and against all others having or claiming any title or interest in the same, only to the use of the same seller, feoffor, donor, or grantor, sellers, feoffors, donors, or grantors, or his, her, or their said heirs, at the time of the bargain, sale, covenant, gift, or grant made.

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CHAP. XLIV.

An ACT for the Prevention of Frauds.

Passed 26th February, 1787.

[V.S. v. 2. 574—J.&V. v. 1. 28—Gr. v. 1. 381—K.&R. v. 1. 74.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That all deeds of gift, and conveyances of goods and chattels, made or to be made in trust to the use of the person or persons making the same deed of gift or conveyance, shall be, and hereby are declared to be void and of none effect.

Conveyances in trust to the grantor void.

2. H. 7. c. 4.

25. H. 3. c. 6.

34. c. 35. 11. 2.

c. 6.

To defraud creditors void.

II. And for the avoiding and abolishing of all feigned, covenous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements, as of goods and chattels, which have been and are devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, and demands, not only to the let or hindrance, of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevisance, between man and man, without which no commonwealth or civil society can be maintained or continued.

13. El. 1. c. 5.

27. El. c. 4.

4 John. Rep.

435.

5 John. Rep.

335.

Be it further enacted by the authority aforesaid, That all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods or chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution, at any time had or made, or hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his, her or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures and demands, by such guileful, covenous or fraudulent devices and practices as aforesaid are, or shall, or may be in any wise disturbed, hindered or defrauded) to be clearly and utterly void, frustrate and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding. (6)

7 John. Rep.

161.

8 John. Rep.

446.

9 John. Rep.

337. 135. 197.

243.

III. And forasmuch as not only the people of this state, but divers of the citizens thereof, and bodies politic and corporate, after conveyances obtained or to be obtained, and purchases made or to be made, of lands, tenements, leases, estates and hereditaments, for money or other good considerations, may have, incur and receive great loss and prejudice, by reason of fraudulent and covenous conveyances, estates, gifts, grants, charges and limitations of uses heretofore made, or hereafter to be made, of, in or out of the lands, tenements or hereditaments so purchased, or to be purchased; which said gifts, grants, charges, estates, uses and conveyances were, or hereafter shall be meant and intended by the parties who so make the same, to be fraudulent and covenous, of

To defraud purchasers void.

27. El. c. 4.

39. El. c. 18.

purpose and intent to deceive such as have purchased, or shall purchase the same ; or else by the secret intent of the parties, the same to be to their own proper use, and at their free disposition, coloured nevertheless by a feigned countenance, and shew of words and sentences, as though the same were made *bona fide*, for good causes, and upon just and lawful considerations ; For remedy of which inconveniences, and for the avoiding of such fraudulent, feigned and covenous conveyances, gifts, grants, charges, uses and estates, and for the maintenance of upright and just dealing in the purchasing of lands, tenements and hereditaments ; *Be it further enacted by the authority aforesaid*, That all and every conveyance, grant, charge, lease, estate, incumbrance and limitation of use or uses, of, in or out of any lands, tenements or other hereditaments whatsoever, had or made, or hereafter to be had or made, for the intent and purpose to defraud and deceive such person or persons, bodies politic or corporate, as have purchased or shall hereafter purchase any estate of inheritance, or for life, lives or years, of or in the same lands, tenements or hereditaments, or any part or parcel thereof, so before conveyed, granted, leased, charged, incumbered or limited in use, or to defraud and deceive such as have or shall purchase any rent, profit or commodity, in or out of the same, or any part thereof, shall be deemed and taken (only as against the person and persons, bodies politic and corporate, his, her and their heirs, successors, executors, administrators and assigns, and against all and every other person and persons, lawfully having or claiming by, from or under them, or any of them, who have purchased, or shall hereafter so purchase, for money or other good consideration, the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of the same) to be utterly void, frustrate and of none effect ; any pretence, colour, feigned consideration, or expressing of any use or uses to the contrary notwithstanding.

Penalty for
justifying such
conveyancers.

27. El. c. 4.
39. El. c. 18.

IV. *And be it further enacted by the authority aforesaid*, That all and every the parties to such feigned, covenous or fraudulent feoffment, gift, grant, alienation, bargain, lease, charge, conveyance, bonds, suits, judgments, executions, and other things before expressed, or being privy or knowing of the same, or any of them, who at any time hereafter shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them, as true, simple and done, had or made *bona fide*, and upon good consideration, or shall alien or assign any the lands, tenements, goods, leases or other things before mentioned, to him, her or them conveyed as aforesaid, or any part thereof, shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons or other profits, of or out of the same, and the whole value of the said goods and chattels, and also so much money as is or shall be contained in any such covenous and feigned bond ; the one moiety whereof to be paid to the people of the state of New-York, and the other moiety to the party or parties grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and

5 John. Rep.
251.

other things aforesaid ; to be recovered in any court of record, by action of debt, bill, plaint or information.

V. *And be it further enacted by the authority aforesaid*, That if any person or persons have made, or hereafter shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance, of, in or out of any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration, at his, her or their will or pleasure, of such conveyance or assurance, gift, grant, limitation of use or uses, or estates, of, in or out of the said lands, tenements or hereditaments, or of, in or out of any part or parcel of them, contained or mentioned in any writing, deed or indenture ; and after such conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance so made or had, shall or do bargain, sell, demise, grant, convey or charge the same lands, tenements or hereditaments, or any part or parcel thereof, to any person or persons, bodies politic and corporate, for money, or other good consideration paid or given (the said first conveyance, assurance, gift, grant, demise, charge or limitation, not by him, her or them revoked, made void or altered, according to the power and authority reserved or expressed unto him, her or them, in and by the said secret conveyance, assurance, gift or grant) then the said former conveyance, gift, grant, demise, charge, limitation of use and uses, and assurance, as touching the said lands, tenements and hereditaments, so after bargained, sold, demised, granted, conveyed or changed, against the said bargaintes, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators and assigns, and against all and every person or persons who have or claim, or shall or may lawfully have or claim any thing, by, from or under them, or any of them, shall be deemed, taken and adjudged to be void, frustrate and of none effect, by virtue and force of this act.

Grants of land with power of revocation void, if afterwards sold.

3 H. 7 c. 4.
13 El. c. 5.
3 W. & M. c. 14.

VI. *Provided always, and be it further enacted by the authority aforesaid*, That this act, or any thing therein contained, shall not extend, or be construed to impeach, defeat, make void or frustrate any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest or limitation of use or uses, of, in, to or out of any lands, tenements or hereditaments, goods or chattels, at any time heretofore had or made, or hereafter to be had or made, upon or for good consideration, and *bona fide* to any person or persons, bodies politic or corporate, not having, at the time of such conveyance or assurance to him, her or them made, any manner of notice, or knowledge of such covin, fraud or collusion, as is aforesaid ; and that no lawful mortgage, made or to be made, *bona fide*, and without fraud or covin, upon good consideration, shall be impeached or impaired by force of this act, but the same shall stand in like force and effect, as the same should have done, if this act had never been made ; any thing before in this act to the contrary in any wise notwithstanding.

This act not to affect bona fide conveyances or mortgages ;

4 W. & M. c. 16.

VII. *And whereas* sundry common recoveries of lands, tenements and hereditaments have been had, and hereafter may be had, against a tenant of the freehold, the reversion or remainder, or the right of the reversion or remainder, then being in some

Nor common recoveries,

13 El. c. 7.

other person or persons; *Be it further enacted by the authority aforesaid*, That every such common recovery heretofore had, and hereafter to be had, of any lands, tenements or hereditaments, shall, as touching such person and persons who then had any reversion or remainder, or right of reversion or remainder, and against the heirs of every of them, stand, remain, and be of such like force and effect, and of none other, as the same should have been if this act had never been made.

Not any vouchers in writ of *formedon*.

VIII. *Provided always, and be it further enacted by the authority aforesaid*, That this act, or any thing herein before contained shall not extend to make void any estate or conveyance, by reason whereof any person or persons shall use any voucher in any writ of *formedon*, now depending, or hereafter to be depending; but that all and every such vouchers in any writ of *formedon* shall stand and be in like force and effect, as if this act had never been made.

Estates by *livery and seisin* only, or by *parol*, to be deemed estates at will;

39 Car. 2. c. 3.

IX. And for the prevention of many fraudulent practices, which are commonly endeavored to be upheld by perjury and subornation of perjury; *Be it further enacted by the authority aforesaid*, That all leases, estates, interest of freehold, or terms of years, or any uncertain interests of, in, to or out of any messuages, manors, lands, tenements or hereditaments, made or created, or hereafter to be made or created, by *livery* and *seisin* only, or by *parol*, and not in writing, and signed by the parties so making and creating the same, or their agents thereunto lawfully authorised by writing, shall have the force and effect of leases, or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect; any consideration for making any such *parol* leases, or estates, or any former law or usage to the contrary notwithstanding. *Except nevertheless*, All leases not exceeding the term of three years, from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two third parts, at the least, of the full improved value of the thing demised.

Except leases for three years.

No interest in lands granted or assigned but in writing
30 Car. 2. c. 3.
8 John. Rep. 253.
7 John. Rep. 305.
2 John. Rep. 248, 436.
8 John. Rep. 972.
4 John. Rep. 81.
2 Caines Rep. 61.

X. *And be it further enacted by the authority aforesaid*, That no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall at any time hereafter be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorised by writing, or by act and operation of law.

When promises shall be in writing.
30 Car. 2. c. 3.
2 John. ca. 52.
4 John. Rep. 81, 416, 432.
3 John. Rep. 310.
8 John. Rep. 29, 376.

XI. *And be it further enacted by the authority aforesaid*, That no action shall be brought whereby to charge any executor or administrator, upon any special promise to answer damages out of his own estate, or whereby to charge the defendant, upon any special promise, to answer for the debt, default or miscarriages of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or

XIII. Павелъ о (мнѣхъ) - 21. 20. (Богъ и Мъ Логанъ, 1
John. 6 хъ. R. 582

some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorised.

XII. *And be it further enacted by the authority aforesaid,* That all declarations or creations of trusts or confidences, of any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party who is or shall be by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void, and of none effect: But all declarations or creations of uses, trusts or confidences of any fines, or common recoveries of any lands, tenements or hereditaments, manifested and proved, or which hereafter shall be manifested and proved, by any deed already made, or hereafter to be made, by the party who is or shall be by law enabled to declare such uses or trusts, after the levying or suffering of any such fines or recoveries, are, and shall be as good and effectual in the law, as if this clause of this act had not been made.

Declarations of trusts to be in writing;

1 John. ca. 123
3 John. Rep. 216.
5 John. Rep. 335.

XIII. *Provided always, and be it further enacted by the authority aforesaid,* That where any conveyance hath been or shall be made, of any lands, tenements or hereditaments, by which a trust or confidence shall or may arise or result, by implication or construction of law, or be transferred or extinguished by act or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been, if this act had not been made.

Except trusts by operation of law.

XIV. *And be it further enacted by the authority aforesaid,* That all grants and assignments of any trust or confidence, shall likewise be in writing, signed by the party granting or assigning the same, or by his or her last will in writing, or else shall likewise be utterly void, and of none effect.

Assignments of trusts to be in writing.

XV. *And be it further enacted by the authority aforesaid,* That no contract for the sale of any goods, wares and merchandize, for the price of ten pounds or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised.

Contracts for the sale of goods to 10l. and upw. rds when binding.

39 C. r. 2. c. 3. § 17.
3 John. Rep. 399.

CHAP. L.

An ACT for giving further Remedy, and regulating the Process and Proceedings in Assises, and other actions.

Passed 12th March, 1787.

[J.&V. v. 2. 102.—Gr. v. 1. 396.—K.&H. v. 1. 80.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if the alienations whereupon writs of entry ought to be granted, happen to be made in so many degrees, that by reason thereof the writ of entry cannot be made in the usual

Where demands may have writs of entry in the past

52 H. 3. c. 89.

form, mentioning the degrees, then the demandants shall have a writ to recover their seisin, without making mention of the degrees into whose hands soever the tenements shall happen to come by such alienations ; but writs of entry without mentioning the degrees, shall not be maintained but in cases where the writs making mention of the degrees cannot lie or hold place.

Several heirs
may recover
in one writ.

52. H. 3. c. 29.

II. *And be it further enacted by the authority aforesaid*, That if any person hath died, or shall die, leaving several persons his or her heirs, either in the same degree, or in different degrees, all such heirs shall or may recover in one writ or action, as heirs of the deceased person.

Writ of deceit
where main-
tainable.

2 Ed. 3. c. 17.

III. *And be it further enacted by the authority aforesaid*, That a writ of deceit shall be maintainable and hold place, as well in the case of garnishment touching plea of land, where such garnishment is given, as in the case of summons in a plea of land.

19. Car. 2. c. 6.
13 Ed. 1. c. 3.

How persons
losing by de-
fault may re-
cover.

IV. *And whereas* formerly, if any person had lost his or her lands or tenements by default, he or she had no other recovery but by writ of right, which was not maintainable by any who could no. claim of mere right as tenants for term of life, where a reversion is reserved ; Therefore, *Be it further enacted by the authority aforesaid*, That their default shall not be so prejudicial, but that they may recover their estate by another writ than by writ of right, if they have right ; and for recovery of land for term of life, lost by default, a writ shall be made in this form :

Form of writ.

COMMAND A, *That justly and without delay, he render to B, one messuage with the appurtenances, in C, which he claims to hold for term of his life, and of which the aforesaid A, doth desforce him.*

Remedy in
cases of nuis-
ance.

13 Ed. 1. c. 24.
6. R. 2. c. 3.

V. *And be it further enacted by the authority aforesaid*, That in cases of nuisance, the plaintiff shall not go without remedy, because the land is transferred to another. *And further*, That where the writ is granted against him or her who hath levied or shall levy the nuisance, the writ shall be made as hath been heretofore used, in the following form :

Form of writ :

A, B, *hath complained to us, That C, D, unjustly and without judgment, hath erected (or made or levied) a house (or a wall, sink pond or whatever other thing it may be) to the nuisance of his freehold.*

And if such things so levied, erected or made, be aliened from one to another, the writ shall be thus :

Where to be
tried.

6. R. 2. c. 3.

A, B, *hath complained to us, that C, D, and E, F, have erected.* *And further*, That all writs of nuisances shall from henceforth, be made returnable, and be determined in the nature of assises, either in the supreme court, or at the circuit court in the county where such nuisances shall happen.

Writs to be
devised in
chancery.

13 Ed. 1. c. 24.

VI. *And be it further enacted by the authority aforesaid*, That whensoever in one case a writ is found and used in the chancery, and a like case falling under like law, and requiring like remedy, there is none found, a proper writ shall be devised and made in such case. And that suitors may not go without remedy, they shall have writs according to their cases.

In what cases
writs of novel
disseisin shall
be.

VII. *And be it further enacted by the authority aforesaid*, That a writ of *novel disseisin*, shall lie and be maintainable for estovers of wood, and for any profit to be taken in woods ; for a corody ;

for delivery of corn and other victuals and necessities, to be received yearly, in a place certain; for toll, passage and such like, to be taken in places certain; and for offices in fee, or for life, as well as for lands and tenements; and for common of pasture, fishing and such like commons, which any person hath or shall have appendant to freehold, or without freehold, by special deed, at the least for time of life; and in all the cases aforesaid, according to the accustomed manner, the writ sha'll express the thing in demand to be a free tenement. And although it has been doubted whether a remedy could be had by this writ, where one feedeth the several pasture of another, it is hereby declared, that a good and sure remedy is given in that case, by the said writ. *And further*, When any person holding for term of years, or in ward, doth alien the same in fee, and by such alienation the freehold is transferred to the feoffee, then remedy shall or may be by writ of *novel disseisin*, and as well the feoffors as the feoffee shall be had for disseisors, so that during the life of any of them, the said writ shall hold place; and if by the death of the parties the remedy fail by that writ, the remedy may be had by writ of entry.

Writs of entry.

VIII. *And be it further enacted by the authority aforesaid*, That if any person or persons named disseisors in any writ of assise of *novel disseisin*, allege any false exception, whereby the taking of the assise may be deferred, as that at another time an assise of the same land passed between the said parties, or that a writ of a higher nature is depending between the same parties of the same land, and upon these, and like matters, do vouch rolls or records to warranty; then, and in every such case, if he or she who shall allege such exception, fail of the warranty that he or she hath vouched, at the day to him or her given, he or she shall be adjudged for a disseisor, without taking the assise, and shall restore the damages before enquired of, or after to be enquired of, to the double. And if such exception be alleged by a bailiff, the taking of the assise shall not be delayed therefor nor the judgment upon the restitution of the lands and damages. But if the master of such bailiff that was absent, come afterwards before the same justices or justice who took the assise, and offer to prove by record or rolls, that at another time an assise passed between the same parties of the same lands, or that the plaintiff at another time did withdraw his or her suit in a like writ, or that a plea is depending by a writ of a higher nature, a writ of *venire facias* shall be granted unto him, to cause the same record to be brought; and when he hath the same, and the justices do perceive that the record so shewed by him, would have been so available before the judgment, that the plaintiff, by force of the same, should have been barred of his or her action, the justices shall immediately cause the party who first recovered, to be warned to appear at a certain day, at which the defendant shall have again his or her seisin and damages, if he or she before paid any by the first judgment given, which shall be restored to him or her to the double as aforesaid; and in the same manner, if the defendant against whom any assise shall pass in his or her absence, shew any deeds or releases upon which the jury were not examined, nor could be examined, because no mention was made of them in plead-

Penalty for false pleading in assise.

13Ed. 1. c. 25.

Plea by bailiff.

13Ed. 1. st. 1. c. 25.

34 Ed. 1. st. 1. 12 Ed. 2. st. 1. c. 1.

Remedy for principal;

13Ed. 1. st. 1. c. 25.

For defendant if assise pass against him when absent.

ing, and by probability might be ignorant of them, the justices, upon the sight of these writings, shall cause the party who first recovered, to be warned to appear at a certain day, and shall cause the jurors of the same assise to come. And if such defendant shall verify those writings to be true, by the verdict of a jury, or by inrollment, he or she who purchased the assise contrary to his or her own deed, shall restore to him or her the damages before recovered as aforesaid.

Suits against disseisors.

1. R. 2. c. 9.
4. H. 4. c. 7.
11. H. 6. c. 3.

IX. *And whereas*, many persons do disseise others of their tenements, and after such disseisin done, make divers alienations and feoffments thereof, whereby the said disseisees, and other demandants and their heirs, are delayed of their recovery; Therefore, *Be it further enacted by the authority aforesaid*, That the said disseisees shall, from henceforth, have their recovery against the first disseisors, during their lives, if they take the profits at the time of the suit commenced, as well of the lands and tenements, as of their double damages, without having any regard to such alienations, gifts or feoffments. *And further*, That this shall hold place in every other action, in plea of land, where such feoffments be made by fraud or collusion, for the demandants to have their recovery against such first feoffors if they thereof take the profits.

Penalty on sheriff or other officer to disseise any one without writ.

11 H. 6. c. 3
3 H. 6. c. 9.

X. *And be it further enacted by the authority aforesaid*, That no sheriff or other officer, by colour of his office, without special warrant or commandment, or authority certain pertaining to his office, disseise any person of his or her freehold, nor of any thing belonging to his or her freehold. And if any do, it shall be lawful for the person disseised to sue at the common law, by writ of *novel disseisin*; and he who shall be convicted thereof, shall pay double damages to the plaintiff, and be further punished by fine or imprisonment, at the discretion of the justices.

Any person disseised by virtue of grants from the state without title to have special assise & treble damages

1 H. 4. c. 3

XI. *And be it further enacted by the authority aforesaid*, That in case any lands or tenements have been, or shall be granted by letters patent, without title found by inquest or otherwise, where the entry of the people of this state is not given by law, they who shall be put out or disseised of their freehold, shall or may have a special assise granted by the chancellor, without any suit to the people of this state in that behalf to be made; and if the parties or persons who have such letters patent, do pray in aid, a writ of *procedendo* shall be granted by the chancellor; and in case they who be so put out or disseised, recover against the persons having such patents, they who be so put out or disseised shall recover their treble damages.

On a forcible entry special

XII. *And whereas* divers persons do make forcible entries into the lands and tenements of others, and put the possessors out of the same, claiming sometimes in their own right, where their entry is not lawful, and sometimes in the right of others, where they have nothing in reversion, in right nor in *demesne*, and there is not any affinity or consanguinity between them, and those in whose right they have entered, and sometimes take away the goods and chattels of the possessor; Therefore, *Be it further enacted by the authority aforesaid*, That if any person, of what estate or condition soever he or she may be, hath made, or shall make any such forcible

0
12, 14
16

entry, in his or her own right, or to his or her own use, or in the right, or to the use of any other, by way of maintenance, or take or carry away any goods, after such forcible entry, from the possessor of the freehold, then, and in every such case, if the party grieved, or other lawful man for him or her, will make affidavit that the entry was made in such forcible manner, the chancellor shall have power, by his discretion, to grant a special assise in this case, to the party aggrieved, of whatsoever value the tenements may be; and if such disseisor be convicted of such disseisin, made in such forcible manner, he or she shall yield to the party grieved, his or her double damages, and be further punished by fine or imprisonment, according to the discretion of the justices. And if such disseisor be convicted by the same assise, that he or she hath taken or carried away the goods or chattels of such disseisees, the justices of assise shall have power to hear and determine, as well for the people of this state, as for the party, of the goods and chattels so carried away, and to award to the party grieved, his or her damages. And further, That in every such special assise, one at least of the justices of the supreme court, be named as one of the justices to take such assise, and that no writ of *supersedeas* be granted to the contrary of such special assises.

assise to be granted and disseisor to recover double damages

§ R. 2. st. 1 c. 2

And damages for goods carried away

Justices of assise

XIII. And be it further enacted by the authority aforesaid, That if in any writ of assise, the sheriff of the same county is or shall be named one of the disseisors, and the tenants in the same assise, or any of them, will aver that the said sheriff is not, nor ever was disseisor nor tenant of the tenements in demand, but was named a disseisor by collusion, the averment shall be received; and if it be found by the said assise, that the said sheriff is not, nor ever was disseisor nor tenant of the tenements in demand, but was named disseisor by collusion, then the justices shall cause the said writ so purchased, or to be purchased, in form aforesaid, to be abated and quashed; and the plaintiff or plaintiffs shall pay double costs thereupon to be taxed.

Writ to abate where sheriff is named a disseisor by collusion

11 H. 6. c. 2

And defendant to recover double costs

XIV. And be it further enacted by the authority aforesaid, That an assise of *novel disseisin* may from henceforth, be granted of rent in arrear, due of tenements in divers counties, to be holden in the confine of the counties within which the tenements be; and thereupon the assise shall be taken and tried by jurors of the said counties, in the same manner as ought to be done of a common of pasture in one county, and appendant to tenements in another county; and that as well of disseisins done in times past, as of disseisins yet to be done; and that writs thereupon, at the suit of the plaintiff, be made from henceforth in the chancery in due form, without any manner of contradiction; but in all such assises, one at the least of the justices of the supreme court, shall be named as one of the justices to take such assises.

Novel disseisin for rent of tenements in different counties.

St. Westminster 1. 3 Ed. 1. c. 24. 13 Ed. 1. c. 18, 25, 46.

XV. And whereas in cases where dower is or shall be demanded, of lands or tenements recovered against the husband by default or covin, and when the wife being endowed, looeth her dower by default, and when tenants by the curtesy, or for term of life, must demand their land lost by default, divers actions do concur, and when it is come to that point that the tenants must be compelled to shew their right, they cannot make answer without them to

13 Ed. 1. c. 34. 6 Ed. 1. st. 1. c. 3.

Tenants in
dower and by
the curtesy to
recover their
lands lost by
default.

whom the reversion or remainder of right belongeth ; Therefore, *Be it further enacted by the authority aforesaid*, That it shall be lawful for them to vouch to warranty, as if they were tenants, if they have a warranty : And when the warrantor hath warranted, plea shall pass between him or her that is seised, and the warrantor according to the tenor of the writ that the tenant purchased before, and by which he or she recovered by default. And so from many actions, they shall at length resort to one judgment, which is this ; that the demandant shall recover his or her demand, or that the tenant shall go quit ; and if the action of such a tenant who is compelled to shew his right, be by writ of right, although the great assise cannot be joined by the words accustomed, yet it shall be joined by words convenient ; for when the tenant in that he or she sheweth his or her right, which belongeth to him or her by the writ which he or she before purchased instead of a demandant, the warrantor may well defend the right of the tenant who is accounted in place of the demandant as aforesaid, and put himself or herself upon the great assise, and pray recognition to be made whether he or she hath more right to the land in demand, than the party aforesaid ; or otherwise the great assise may be joined thus : Such an one defends the right, and so the warrantor may defend the right, and acknowledge the seisin of his or her ancestor, and put himself or herself upon the great assise, and pray recognition to be made whether he or she hath more right in the land, as in that whereof he or she enfeoffed such a one, or that such a one released and quit claimed, than the aforesaid party.

Vouchee not
present to be
summoned.

33 H. 3. c. 26.

XVI. *And be it further enacted by the authority aforesaid*, That when any person not present in court, shall be vouched to warranty in a plea of land or tenement, the party so vouched shall have reasonable summons, according to the discretion of the justices ; and if the demandant will aver that the person vouched is dead, or that there is no such person, such averment shall be received and tried without delay.

Proceedings
in cases of
voucher and
where it is
counterpleaded.

20 Ed. 1. st. 1
14 Ed. 3. st. 1.
c. 18.

XVII. *And be it further enacted by the authority aforesaid*, That in writs concerning possession, wherehy lands or tenements are demanded, which ought to descend, remain, revert, or fall, by the death of any ancestor, or otherwise, if the tenant vouch to warranty, and the demandant counterpleadeth him or her, and will aver by assise, or by the country or otherwise, as the court will award, that the tenant, or his or her ancestor or predecessor, whose heir he or she is, was the first that entered after the death of him or her of whose seisin he or she demandeth, the averment of the demandant shall be received, if the tenant will abide thereupon ; and if not, he or she shall be further compelled to another answer, if he or she have not his or her warrantor present, who will warrant him or her freely and immediately enter into the warranty ; and the demandant shall have the like exceptions against the warrantor, if he or she will vouch further, as he or she had before against the first tenant ; and in all manner of writs of entry, which make mention of degrees, none shall vouch out of the line. *And further*, That as well in the writs aforesaid, as in writs of right, if the tenant vouch to warranty, and the demandant will counter-

plead him or her, and be ready to aver by the country that he or she, who is so vouched to warranty, nor his or her ancestors or predecessors, had never seisin of the land or tenement demanded, nor fee nor service by the hand of his or her tenant, or his or her ancestors or predecessors, since the time of him or her on whose seisin the demandant declareth, until the time that the writ was purchased, and the plea moved, thereby he, she or they might have enfeoffed the tenant, or his or her ancestor or predecessors, then, whether the party vouched be present or absent, the averment of the demandant shall be received, if the tenant will abide thereupon; if not, the tenant shall be further compelled to another answer, and the demandant shall have his or her exceptions against the warrantor, as he or she had before against the first tenant. *And further*, If the tenant hath a deed that compriseth warranty of another man who is bound in none of the cases before mentioned, to the warranty of an older degree, his or her recovery by a writ of warranty of charters out of the chancery, shall be saved to him or her, at what time soever he or she will purchase it, but the plea shall not be delayed therefor.

4 Ann. c. 16.

XVIII. *And be it further enacted by the authority aforesaid*, That when any person shall demand lands or tenements against another, and the party impleaded voucheth to warranty, and the warrantor denieth his or her warranty, and it be found that the vouchee is bound to warranty by the law and custom of this state, then, in like manner as the tenant should lose the land or tenement in demand, in case where he vouched, and the vouchee could discharge himself of the warranty, in the same manner shall the warrantor lose, in case where he or she denieth his or her warranty, and it be tried against him or her, that he or she is bound to warranty. *And further*, That in all cases where an inquest shall be depending between the tenant and the warrantor, and the demandant will require a writ to cause the jury to come, it shall be granted.

Vouchee denying his warranty shall lose the land.

13 Ed. 1. c. 6.

Demandant may have a venire on an issue between tenant and warrantor.

XIX. *And be it further enacted by the authority aforesaid*, That if any person, be disseised of his or her freehold, and shall recover seisin by assise of *novel disseisin*, or by confession of them that did the disseisin, and after the plaintiff hath had seisin delivered by the sheriff, if the said disseisors do again disseise the same plaintiff of the same freehold, and thereof be convicted, the plaintiff shall recover double damages, and the re-disseisors shall be also punished by fine and imprisonment, and shall be forthwith taken and committed, and kept in gaol until they shall have paid such damages and fine, and be thence delivered by due course of law. And the manner of proceeding in such case, shall be as follows: When the plaintiff shall come to the chancery, he or she shall have a writ directed to the sheriff, in which must be contained the plaint of disseisin upon the disseisin, and therefore it shall be commanded to the sheriff, that, taking with him the coroners of the county, or one of them, if there be more than one in the same county, and two or more justices of the peace in the same county, he go in his proper person, to the tenement or pasture whereof the plaint had been made, and before them, by the first jurors, and other neighbours and lawful men, if the first reco-

Proceedings in cases of re-disseisin.

20 H 3. c. 3.
13 Ed. 1. st. 1.
c. 26.

very was by verdict, if not, then by neighbours and lawful men, he diligently thereof make inquisition; and if they find the plaintiff disseised again as aforesaid, then the sheriff shall do according to the provision aforesaid; but if it be found otherwise, then the plaintiff shall be amerced, and the others shall go quit.— But no sheriff shall proceed in any such plaint, without a special writ. And in the same manner it shall be done to them who shall recover their seisin of any lands or tenements, by verdict, default, reddition or otherwise, in any real action, in any court of record, if they be afterwards disseised by the first deforceors, against whom they shall have recovered.

Remedy by
cessavit.

St. Glouc. 6.
Ed. 1. c. 4.

XX. *And be it further enacted by the authority aforesaid, That if any person hath demised, or shall demise his or her lands, to any other person, and to his or her heirs, rendering a certain annual rent for the same, and he or she who holdeth the land so charged, letteth it lie fresh, so that the party can find no distress there by the space of two years, to compel the farmer to render, or to do as is contained in the writing or lease; then the two years being passed, the lessor or grantor, or his heirs or assigns, shall have an action to demand the land in demesne, by a writ out of the chancery, in this form :*

Form of writ. COMMAND A, That justly and without delay he render to B, one messuage, with the appurtenances, in C, which the same B, demised to the aforesaid A, rendering therefor, yearly, to the same B, (such a certain rent) and which to him ought to revert, because the aforesaid A, in paying the aforesaid rent, hath ceased by two years, as he saith.

And if he or she against whom the land is demanded, come before judgment and pay the arrearages and the damages and costs, and find surety, such as the court shall think sufficient, to pay the rent from thenceforth, as is contained in the writing or lease, he or she shall keep the land; but if he or she neglect until it be recovered by judgment, he or she shall be barred forever; and, in like manner, if any withhold from any person, of whom he or she holds, his or her due and accustomed service, by two years, the person to whom the same is or shall be due, shall have an action to demand the lands in demesne, by a writ in this form :

St. Westm. 2.
13 Ed. 1. c. 21.
COMMAND A, *That justly and without delay, he render to B, (such a tenement) which the aforesaid A holds of him by such certain service, and which to the aforesaid B, ought to revert, because the aforesaid A, in doing the service aforesaid, hath ceased by two years, as he saith.*

And further, That as well in the case of rent, as in the cases of services, writs of entry shall be made as aforesaid, for the heirs of the demandant, and against the heirs of the tenant, and against them to whom such land shall be aliened.

Where a view
shall be grant-
ed.

13 Ed. 1. c. 48.

XXI. *And be it further enacted by the authority aforesaid, That from henceforth view shall not be granted to the tenant, but in case where a view of the land is necessary; and that if one lose land by default, and he or she who loseth shall purchase a writ to demand the same land, and in case where one by an exception dilatory abateth a writ after the view of the land, as by non-tenure, misnaming of the town, or such like, and the demandant purchaseth another writ; in these cases the view shall not be granted, if the party had view in the first writs: And in a writ*

of dower, where the dower in demand is of land that the husband aliened to the tenant, or his or her ancestors, where the tenant ought not to be ignorant what land the husband did alien to him or her, or to his or her ancestor, though the husband did not die seised, yet the view shall not be granted to the tenant. And in a writ of entry, that is abated because the demandant misnamed the entry, if the demandant purchaseth another writ of entry, if the tenant had view in the first writ, he shall not have it in the second. And in all writs where lands are or shall be demanded by reason of a demise made by the demandant, or his or her ancestor, to the tenant, and not to his or her ancestors, as that which the demandant, or his or her ancestor, being within age, not of sound mind, or in prison, and such like, demised to the tenant, view shall not be granted; but if the demise was to the ancestor of the tenant, view shall be granted, as hath been done before.

XXII. *And be it further enacted by the authority aforesaid,* That in all writs of *cousinage, uile* and *besaile*, if the tenant will plead that the plaintiff is not the next heir of the ancestor, by whose death he or she demandeth the land, such plea shall be received, and the matter enquired of, and the court shall proceed to judgment, according to the verdict thereupon to be given.

XXIII. *And be it further enacted by the authority aforesaid,* That no writ shall be abated by the exception of non-tenure of parcel, but for the quantity of the non-tenure so alleged.

XXIV. *And be it further enacted by the authority aforesaid,* That if any person shall purchase a writ of *novel disseisin*, and he or she against whom the writ is brought as principal disseisor, dieth before the assise be passed, then the plaintiff shall have his or her writ of entry upon disseisin, against the heir or heirs of the disseisor or disseisors, of what age soever such heir or heirs may be; and likewise the heir or heirs of the disseisee, shall have his, her or their writ or writs of entry, against the disseissors, or their heirs, of what age soever they be, if the disseisee die before he hath purchased his writ, so that for the non-age of the heirs of the one part or other, the writ shall not be abated, nor the plea delayed.

XXV. *And be it further enacted by the authority aforesaid,* That if a child within age be holden from his or her inheritance, after the death of his or her father, mother, brother, sister, cousin, grand father or great-grand father, whereby such infant is driven to his or her writ, and his or her adversary cometh into the court, and for answer allegeth a feoffment, or pleadeth some other thing by which the court would formerly award the age, and defer the inquest until the full age of the infant, from henceforth, in every such case, the inquest shall not be deferred until the full age of the infant, but shall pass as if he or she was of full age.

XXVI. *And be it further enacted by the authority aforesaid,* That all tenants in assise of *novel disseisin*, may either appear and plead in person, or make and appear and plead by their attorneys, or plead by bailiffs, at their pleasure.

XXVII. *And be it further enacted by the authority aforesaid,* That the panels of the assises shall, in all cases, be arrayed, and a copy thereof, delivered by the sheriff, or his deputy, to the plaintiffs, tenants and defendants, if they demand the same, at least

In writs of *cousinage, uile* and *besaile* tenant may plead that plaintiff is not the next heir.

St. Westm. 2. 13 Ed. 1. c. 30.

No writ to abate by non-tenure of parcel.

25 Ed. 3. st. 5 c. 16.

Non age in writs of entry, upon disseisin in the per, not to be allowed.

52 H. 3. c. 29 3 Ed. 1. c. 47

In mort d'ancestor inquest not delayed by non age of the plaintiff.

6 Ed. 1. c. 2

Tenants in assise how to appear. 12 Ed. 2. st. 1. c. 1.

Panel when to be made.

6 H. 6. c. 2

six days before the circuit court, or session of the justices, at which the same shall be returnable, upon pain that every sheriff or other officer neglecting his duty herein, shall forfeit, for every offence, to the party grieved, the sum of twenty pounds; to be recovered, with costs of suit, in any court of record, by action of debt, bill, plaint or information.

Plaintiff in assise may abridge his plaint of any part.

21 H. 8. c. 3

XXVIII. *And be it further enacted by the authority aforesaid*, That the plaintiff in every assise may, from henceforth, at his pleasure, sever and abridge his or her plaint of a moiety, or any other part or parts whereunto any bar is or shall be pleaded, in such like manner as he or she might do in case the pleas in bar had been made, and divided to any certainty or number of acres in the plaint; and that the plaint for the residue of the part or parts of the lands, not abridged, shall be and stand good and effectual in the law.

Tenant to commit no waste pending the suit.

6 Ed. 1. c. 13

XXIX. *And be it further enacted by the authority aforesaid*, That from the time any plea shall be moved by writ, the tenant shall not make any waste or *estrepement* of land in demand, pending the suit; and if he or she do, the court wherein the plea depends, shall cause the land in demand to be kept at the suit of the demandant.

Of the test and return of process.

28 Ed. 1. c. 13

XXX. *And be it further enacted by the authority aforesaid*, That all writs of summons, and attachments, and other process in pleas of lands, shall, from henceforth, have full fifteen days at the least between the days of the test and the days of the return thereof. *And further*, That in all writs of dower, after issue joined, it shall not be needful or requisite to have above fifteen days between the test and return of the *venire facias*, or any other process to be sued out for the trial of the said issue, but that the writ of *venire facias*, and other process after issue joined, and until judgment be given, having only fifteen days between the test and the return thereof, shall be good and effectual. *And also*, That all writs of summons to the warranty, and all other process in any real action, being tested the last day, or any other day in any term, and returnable the first day, or any other day in the next succeeding term, shall be good and effectual.

Summons proclaimed at the church door.

28 Ed. 1. c. 13

XXXI. And for avoiding secret summons in real actions, without convenient notice to the tenants of the freehold; *Be it further enacted by the authority aforesaid*, That after every summons upon the lands in any real action, and fourteen days at the least before the day of the return thereof, the sheriff to whom such summons shall be directed, shall make, or cause proclamation of the same summons to be made, at or near the most usual door of the church of the town or place where the land whereupon, the summons was made, doth lie, upon a Sunday, immediately after divine service and sermon, if any there be; and if there be more than one church in such town, then such proclamation shall be made, in form aforesaid, at or near to the most usual door of the church nearest to the said lands; and if there be no church in such town, then such proclamation shall be made, in form aforesaid, at or near to the most usual door of the church in the same county nearest to the said land; and such proclamation so made as aforesaid, shall be returned, together with the name of the sum-

moners; and if such summons shall not be proclaimed and returned as aforesaid, then no *grand cape* to be awarded, but an *alias* or *pluries* summons, as the case shall require, until a summons and proclamation shall be duly made and returned as aforesaid.

XXXII. And for avoiding delays in all manner of writs and attachments; *Be it further enacted by the authority aforesaid*, That if the tenant or defendant after the first attachment returned, make default, the great distress shall be immediately awarded, and the tenant or defendant shall be distrained from time to time, until he or she do appear, or comply with the purpose of such writ. And if the sheriff do not make a sufficient return to any such writ, at the day of the return thereof, he shall be amerced.

After attachment distress to be awarded

3 Ed. 1. c. 45

XXXIII. And whereas the process by *distingas* as heretofore used, is dilatory and expensive; For remedy whereof, *Be it further enacted by the authority aforesaid*, That the court out of which the writ proceeds, may order the issues levied from time to time to be sold, and the monies arising thereby to be applied to pay such costs to the plaintiff as the court shall think just, under all the circumstances to order, and the surplus to be retained until the defendant or tenant shall have appeared, or other purpose of the writ be answered, and when the purpose of the writ is answered, that then the said issues shall be returned, or if sold, what shall remain of the money arising by such sale, shall be repaid to the party distrained upon.

Issues levied may be sold

XXXIV. And because such things as be recorded before the chancellor and the judges and justices who have record, and be inrolled in their rolls, process of plea ought not to be made by summons, attachment, view of land and other solemnities of the court, as hath been used to be done of bargains and covenants made out of court; Therefore, *Be it further enacted by the authority aforesaid*, That from henceforth those things which are found inrolled before those who have record, or contained in fines, whether they be recoveries or judgments had, or contracts, covenants, obligations, services or customs acknowledged, or other thing whatsoever inrolled, wherein the court, without offence of the law and custom; may execute their authority, shall have such force that the party, at any time within the year after the same are or shall be had, levied or acknowledged, shall have a writ of execution of the same; and when the fine, judgment, recovery or recognizance be levied, had or made, of a further time passed, the sheriff shall be commanded that he make known to the party of whom it is complained, that he or she be before the justices or court at a certain day, to shew if he or she have any thing to say why such matters inrolled or contained in the fine, ought not to have execution; and if he or she do not come at the day, or do come and can say nothing why execution ought not to be done, the sheriff shall be commanded to cause the thing inrolled or contained in the fine, to be executed.

In what cases *scire facias* to issue.

St. Westm. 2.
13
Ed. 1. c. 45

XXXV. And be it further enacted by the authority aforesaid, That where a verdict hath been or shall be found in assise, or in any other action whatsoever, and the parties have been or shall be adjourned upon difficulty in law upon the matter so found, the

Plaintiff shall not be nonsuited after verdict.

3 H. 6. c. 7

plaintiff shall not be non-suited, if the verdict pass against him or her.

ELEVENTH SESSION.

CHAP. IV.

An ACT for giving further Remedy by Action of Account.

Passed 6th February, 1788.

[J.&V. v. 2. 177. Gr. v. 2. 4. K.&R. v. 1. 94.]

Manner of
proceeding in
actions of
account.

29 H. 3. c. 23.
51 H. 3. c. 2.
53 H. 3. c. 17.

13. Ed. 1. c.
11.

Sheriff or
gaoler suffer-
ing prisoners
to escape to
be answerable
for the debt
or damages.

One joint ten-
ant, or tenant
in common,
may have ac-
tion of account

I. *BE it enacted by the People of the State of New-York, represent-
ed in Senate and Assembly, and it is hereby enacted by the authority
of the same,* That where any person is or shall be bound or liable
to account, as guardian, bailiff, receiver or otherwise, to any other,
and will not give account willingly, and the party to whom such
account ought to be made, shall sue out a writ of account, if the
person against whom such writ is issued, being summoned, do not
appear at the return of the writ, or if it be returned, that the de-
fendant hath nothing, then the defendant shall be attached by his
or her body, to come and make his or her account; and if it be
returned, that the defendant cannot be found, the process may be
pursued to the exigent and outlawry thereupon; and when such
accountant shall appear in court, and submit, or be adjudged to
account, auditors shall be assigned to take his or her account; and
if he or she shall be found in arrears, and cannot pay the arrears,
and the costs of suit forthwith, he or she shall be committed to
gaol, there to be kept, under safe custody, living at his or her own
costs, until he or she shall have fully satisfied such arrears, with
the costs of suit. And if such accountant shall neglect or refuse
to account before the auditors, he or she shall be committed to
gaol, there to be kept as aforesaid, until he or she shall satisfy the
plaintiff of his or her demand, with costs as aforesaid. *And fur-
ther,* That if it shall be found, that there is a surplusage due on
such account, from the plaintiff to the defendant, then the defend-
ant shall have judgment to recover such surplusage, with costs of
suit, against the plaintiff, unless where the suit is brought by exe-
cutors or administrators, in right of their testator or intestate; in
which case the defendant shall not recover costs against them:—
And the defendant shall or may have such execution for the same,
as he or she might have had, if he or she had recovered such sur-
plusage by action of debt. *And moreover,* If any sheriff or gaoler
shall suffer any such prisoner to go out of prison, without the as-
sent of the plaintiff, he shall be answerable to the plaintiff for the
debt or damages done to him or her by such accountant, accord-
ing as it may be found by the country; and the party at whose
suit such prisoner was committed, shall have his or her recovery,
by action of debt, or by bill or plaint, in any court of record.

II. *And be it further enacted by the authority aforesaid,* That
actions of account shall and may be brought and maintained by
one joint tenant, or tenant in common, his or her executors or ad-
ministrators, against the other, as bailiff, for receiving more than

comes to his or her just share or proportion, and against the executor or administrators of such joint tenant, or tenant in common.*

III. *And be it further enacted by the authority aforesaid,* That the auditors appointed by the court where any action of account shall be depending, shall be, and hereby are empowered to administer an oath, and to examine the parties, on oath, touching the matters in question; and for their pains and trouble in auditing and taking such account, shall have such allowance as the court shall adjudge to be reasonable, to be paid by the party in whose favour the balance shall be found, and to be allowed to him or her, in the costs to be taxed against the opposite party, where costs are recoverable.

* V. S. v. 2. 770. § 20.

CHAP. V.

An ACT to prevent Abuses and Delays in Actions of Replevin.

Passed 6th February, 1788.

[V.S. v. 2. 360.—J.&V. v. 2. 178. Gr. v. 2. 5. K.&R. v. 1. 96.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That if the beasts, or goods, or chattels of any person, at any time hereafter, be taken and wrongfully detained, the sheriff, by a writ of replevin to be issued out of the chancery, or upon complaint thereof to him to be made without writ, shall cause the same beasts, or goods, or chattels to be replevied, and delivered, without let or gainsaying of the person who took them, whether they were taken within liberties or without, and shall summon the person who took them, to appear, if the suit be by writ, at the return thereof; and if by plaint, at the next court of common pleas, to be held in his county, to answer the plaintiff of the taking and unjust detention of the same beasts, or goods, or chattels. And if any defendant shall not appear according to such summons, then he or she shall be attached; and if such defendant shall not appear upon the return of the attachment, then he or she shall be distrained, from time to time, until he or she shall appear to answer the plaintiff. *And further,* 'That such plaint before the sheriff shall be in writing, and in the following form:

WESTCHESTER county, to wit: A. B. of Bedford, in the county of Westchester, yeoman, complains of C. D. of the manor of Pelham, in the county of Westchester, gentleman, of a plea of taking and unjustly detaining his beasts (or, his beasts, goods and chattels, or, his goods and chattels, or, his certain mare, or, his certain silver bowl,) and gives security to prosecute his said complaint, and to return the same beasts, if return thereof shall be adjudged.

Which plaint the sheriff shall return to the next court of common pleas to be held in and for his county, in the same manner as if it was a writ of replevin, returnable into the same court, and the like proceedings shall thereupon be had in the same court, as may or ought to be had upon a writ of replevin. *And moreover,* It shall be lawful for either party, in any writ or plaint in replevin, to be

against another.
4. Ann. c. 21.
§. 27.

Auditors to examine parties and witnesses on oath.

Beasts, goods or chattels wrongfully detained, to be replevied by a writ or plaint.

52. H. 3. c. 27.
3. E. 1. c. 17.
Process therein.

17. Car. 2. c. 7.
8. H. 5. c. 7.
7. John. Rep.
140.

11 H. 4. c. 10.
Gibb. Repl. 57.
et seq.

Form of the plaint.

Writes or plaints in replevin, may be removed by either party into the supreme court.
13. Ed. 1. c. 2.
Sec. 2.

Gibb. Repl.
101.

depending in any court of common pleas, at any time before any juror is sworn, or any judgment obtained, to cause the writ or plaint, and the proceedings thereon, to be removed into the supreme court, by writ of *certiorari*; and such proceedings shall be thereupon in the supreme court, as if the suit had been originally commenced in the supreme court.

All writs of
replevin re-
turnable in
the supreme
court, or court
of common
pleas.

II. *And be it further enacted by the authority aforesaid*, That all writs of replevin shall henceforth be made returnable in the supreme court, or in the court of common pleas, in and for the county where the beasts, or goods or chattels, for the taking whereof the writ shall be brought, were taken, and shall be in the form following:

Form of the
writ.

THE PEOPLE, TO THE SHERIFF. *If A. B. of the city of New-York, merchant, shall give you security to prosecute his complaint, and to return his beasts (or, his beasts, goods, and chattels, or, his goods and chattels, or, his certain horse, or, his certain silver tankard) which C. D. of Goshen, in Orange county, gentleman, took and unjustly detains against gages and pledges, as he saith, if return thereof shall be adjudged; then cause the same beasts to be replevied, and delivered to the aforesaid A. B. without delay, and summon, by good summoners, the aforesaid C. D. that he be before our justices of our supreme court (or, our judges and assistant justices of our court of common pleas, to be held in and for your county) at (such a place) on (such a day) to answer the aforesaid A. B. of a plea of taking and unjustly detaining the beasts aforesaid.*

Sheriff may
take the power
of his county,
and break open
any house, or place
of strength, to
make replevin.
Westm. 1. c.
17.
Gibb Repl. 70.

III. *And be it further enacted by the authority aforesaid*, That if any person shall take the beasts, or goods, or chattels of another, and drive, and convey and put them into any house or place of strength, and the person from whom the same beasts, or goods or chattels shall be taken, sues for a replevin thereof, by writ or plaint, the sheriff shall solemnly demand deliverance thereof, at the house or place where the same are detained; and if neither the taker, nor any person on behalf of such taker, shall, upon demand, deliver the same, or if no person shall come upon such demand to deliver the same, the sheriff shall take the power of his county, and break open such house or place of strength, and make replevin according to the writ or plaint.

Sheriff to take
security to
prosecute the
suit, or be ac-
countable for
the value of
the things de-
livered.

IV. *And be it further enacted by the authority aforesaid*, That every sheriff, before he makes deliverance of any beasts, goods or chattels, by virtue of any writ or plaint in replevin, shall take of the plaintiff sufficient security to prosecute the suit, and to return the same beasts, goods or chattels, if return thereof shall be adjudged; and if any sheriff shall take security otherwise, or neglect to take such security, he shall answer for the price or value of the beasts, goods and chattels; and the person who distraineth, shall have his or her recovery, by writ that he shall restore to him or her so many beasts, goods or chattels.

13. Ed. 1. c. 2.
§. 3.
Gibb. Repl. 67.

V. *And be it further enacted by the authority aforesaid*, That if the plaintiff, in any action or suit in replevin, shall make default, and a return of the beasts, or goods, or chattels, is awarded to the distrainer, the sheriff shall be commanded by a judicial writ, to make return of the beasts, or goods, or chattels, unto the distrainer; in which writ it shall be expressed, that the sheriff shall not deliver them without writ, making mention of the judgment, which cannot be without a writ issuing out of the same court in

If return of
goods be a-
warded,
plaintiff may
have a writ of
second deliv-
erance.

which the matter was moved ; and if the plaintiff cometh unto them, and desireth replevin of the same beasts, goods and chattels, he or she shall have a judicial writ, that the sheriff, taking security for the suit, and also for the return of the same beasts, goods and chattels, or for the price or value of them, if return shall be awarded, shall deliver unto the plaintiff the beasts, goods and chattels before returned ; and the distrainer shall be attached to come and be at a certain day, at the court in which the plea was moved, in the presence of the parties ; and if the plaintiff make default again, or for another cause, return of the distress be awarded, being now twice replevied, the distress shall remain irrepleviable. But if a distress be taken of anew, and for a new cause, the process aforesaid shall be observed in the same new distress.

VI. *And whereas* frequent abuses have been committed in the execution of writs of replevin, by sheriffs making deliverance, notwithstanding due notice and claim of property have been interposed by the defendant or possessor ; For the more effectual prevention whereof, *Be it further enacted by the authority aforesaid*, That if at any time hereafter, on a writ or plaint of replevin, the defendant in replevin, or possessor, shall claim property in the thing whereof deliverance is sought, and the sheriff, either by himself, his under sheriff, or bailiff, having due notice, shall nevertheless proceed to make deliverance, and dispossess such defendant thereof, before the claim of property shall be enquired into, or tried according to law ; such sheriff, for every such offence, shall, besides being answerable to the defendant for the trespass, forfeit the sum of one hundred pounds, to be recovered by any person who shall sue for the same, in any court of record, by action of debt, bill, plaint or information ; the one moiety thereof to the use of the person who shall sue for the same, and the other moiety thereof to the use of the people of this state.

VII. *And be it further enacted by the authority aforesaid*, That no distress of beasts shall be driven out of the town, manor, district or precinct, where such distress is or shall be taken, except that it be to a poundvert, within the same county, not above three miles distant from the place where the said distress shall be taken ; and that no beasts, or goods or chattels, distrained or taken by way of distress, for any cause whatsoever at one time, shall be impounded in several places, whereby the owner or owners of such distress, shall be constrained to sue several replevins for the delivery of the said distress, so taken at one time, upon pain that every person offending therein, shall for every such offence, forfeit to the party grieved, ten pounds, and treble damages ; to be recovered in any court of record, by action of debt, bill, plaint or information.

VIII. *And be it further enacted by the authority aforesaid*, That every sheriff shall, in every replevin of a distress for rent, take in his own name, from the plaintiff and two sureties, a bond in double the value of the beasts, or goods or chattels distrained (such value to be ascertained by the oath of one or more witnesses not interested, and which oath such sheriff is hereby authorised to administer) and conditioned for prosecuting the suit with effect, and without delay, and for returning the beasts, or goods and

But if return be again awarded, the distress to be irrepleviable. 13. Ed. 1. Westm. 2. c. 2. Gilb. Repl. 66, 271. et seq.

On claim of property, if sheriff makes replevin before it is tried, he forfeits 100l. besides being answerable for the trespass.

Gilb. Repl. 98 99. et seq. V. S. v. 2. 561.

Beasts distrained, not to be driven out of the county. 1 & 2. Ph. & M. c. 12.

Nor impounded in different places,

Under penalty of 10l. and treble damages.

In replevin of distress for rent, the sheriff to take a bond of plaintiff, with sureties in double the value of the goods, to prosecute a d. make return, if awarded.

17 Car. 2. c. 7.
11 Geo. 2. c. 19.

Such bond to be assigned to the defendant, who may bring an action thereon in his own name.

11 Geo. 2. c. 19.
§. 23.

An avowry may be made by the lord upon the land holden of him without naming his tenant ;

7. H. 8. c. 4.
21. H. 8. c. 19.
§. 2.
11. Geo. 2. c. 19.
§. 23.

And in like manner on writs of second deliverance.

Plaintiffs and defendants in replevin, or in writs of second deliverance, to have like pleas and aid-prayers as at common law ;

13 Ed. 1. c. 2.

And like tender in aid

If plaintiff in replevin is non-suit before issue joined, the defendant may make avowry, if distress was for rent, and have a writ of enquiry.
17. Car. 2 c. 7.

chattels, in case a return shall be awarded, before any deliverance be made of the distress ; and the sheriff shall, at the request and costs of the defendant, avowant, or person making cognizance, assign such bond to the defendant, avowant, or person making cognizance, by endorsing the same, and attesting it under his hand, in the presence of two witnesses ; and if the bond be forfeited the defendant, avowant, or person making cognizance, may bring an action thereupon, in his or her own name ; and the court may, by rule, give such relief to the parties upon such bond, as shall be agreeable to justice ; and such rule shall have the nature and effect of a defeazance to such bond.

IX. *And be it further enacted by the authority aforesaid,* That wheresoever any lands, tenements or hereditaments, are or shall be held by any person or persons, by rents, customs or services, if the person of whom any such lands, tenements or hereditaments, are or shall be held, shall distrain upon the same lands or tenements, for any such rents, customs or services, and replevin thereof be sued, the person of whom the same lands, tenements or hereditaments, are or shall be so holden, may avow, or his or her bailiff, or servant, make cognizance or justify for taking the said distress, upon the same lands, tenements or hereditaments, so holden as in lands or tenements within his or her fee, alleging in the said avowry, cognizance and justification, the same lands and tenements, to be holden of him or her, without naming any person certain to be tenant of the same, and without making any avowry, cognizance or justification upon any certain person. And that the distrainer, or his or her bailiff or servant, may make avowry, cognizance or justification, in like manner and form, upon every writ of second deliverance.

X. *And be it further enacted by the authority aforesaid,* That the plaintiffs and defendants in all writs or complaints of replevin, or writs of second deliverance, and in every of them, shall and may have like pleas, and like aid-prayers in all such avowries, cognizances and justifications (pleas of disclaimer only excepted) as they might have had before the making of this act, and as though the said avowry, cognizance or justification, had been made after the due order of the common law ; and that all such persons, as by the common law, may lawfully join to the plaintiffs or defendants in the said writs or complaints of replevin, or second deliverance, as well without process as by process, shall or may, from henceforth, join unto the said plaintiffs or defendants, as well without process as by process, and have like pleas, and like advantages in all things (pleas of disclaimer only excepted) as they might have done by the order of the common law, before the making of this act.

XI. *And be it further enacted by the authority aforesaid,* That whensoever any plaintiff in replevin shall be non-suit, before issue joined in any suit of replevin, by plaint or writ lawfully returned, removed or depending in any court of record, the defendant, if the distress was made for rent, making a suggestion in nature of an avowry or cognizance for such rent, to ascertain the court of the cause of distress, the court, upon his or her prayer, instead of awarding a return of the distress, shall award a writ to the sheriff of the county where the distress was taken, to

enquire, by the oath of twelve good and lawful men of his bailwick, touching the sum in arrear at the time of such distress taken, and the value of the beasts, or goods and chattels distrained; and thereupon fifteen days notice shall be given to the plaintiff, or his or her attorney, in court, of the sitting of such enquiry; and thereupon the sheriff shall enquire of the truth of the matters contained in such writ, by the oath of twelve good and lawful men of his county; and upon the return of such inquisition, the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the beasts, goods and chattels distrained, shall amount unto that value; and in case they shall not amount to that value, then so much as the value of the said beasts, goods and chattels, so distrained, shall amount unto, together with his or her full costs of suit, and shall have execution thereupon for the same, by *capias ad satisfaciendum, fieri facias*, or otherwise, as the law shall require; and in case such plaintiff shall be non-suit after avowry or cognizance made, and issue joined, or if the verdict shall be given against such plaintiff, then the jurors impanelled, or returned to enquire of such issue, shall, at the prayer of the defendant, enquire concerning the sum of the arrears, and the value of the beasts, or goods and chattels, distrained; and thereupon the avowant, or the person who makes cognizance, shall have judgment for such arrearages, or so much thereof as the beasts, goods and chattels distrained, amount unto, together with his or her full costs, and shall have like execution for the same as aforesaid.—

And further, That if judgment be given upon demurrer for the avowant, or the person who makes cognizance for any rent, the court, instead of awarding a return of the distress, shall, at the prayer of the defendant, award a writ to enquire of the value of such distress, and upon the return thereof, judgment shall be given for the avowant, or person who makes cognizance as aforesaid, for the arrears alleged to be behind in such avowry or cognizance, if the beasts, or goods and chattels so distrained, shall amount to that value; and in case they shall not amount to that value, then for so much as the said beasts, or goods and chattels so distrained, amount unto; together with his or her full costs of suit, and shall have like execution for the same as aforesaid. *Provided always*, That where the value of the beasts, goods and chattels distrained as aforesaid, shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears were due, his or her executors or administrators, may, from time to time, distrain again for the residue of the said arrears.

XII. *And be it further enacted and declared by the authority aforesaid*, That no replevin shall lie in any case of distress for any tax, assessment or fine, to be collected or levied in pursuance of any law of this state; and if any person or persons shall hereafter sue out or prosecute a replevin in any such case, he, she or they, shall forfeit the sum of fifty pounds, to be recovered, with costs of suit, in any court of record within this state, by action of debt, bill, plaint or information; the one moiety to any person who shall sue for the same, and the other moiety to the people of this state.

[THIRTEENTH SECTION OBSOLETE.]

And judgment thereupon.

And if plaintiff be non-suit after issue joined, or a verdict be given against him, the jury to enquire of the arrears and value of the distress.
17. Car. 2. c. 2.
§. 2. 3.

7. H. 8. c. 4.
§. 21. H. 8. c. 13.

If upon demurrer judgment be given for defendant, writ of enquiry to be awarded.

If distress is not equal to the arrears, party entitled may distrain for residue.
17. Car. 2. c. 2.
§. 4.

No replevin allowed in cases of distress for tax, assessment or fine.

Opinion of the judges in Hampden's case; vide also 16 Car. 1. c. 14.

An ACT to prevent forcible Entries and Detainers.

Passed 6th February, 1788.

[J.&V. v. 2. 182. Gr. v. 2. 11. K.&R. v. 1. 101.]

1. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That no person or persons shall hereafter make any entry into any lands, tenements or other possessions, but in cases where entry is given by the law, and in such case, not with strong hand, nor with multitude of people, but only in peaceable and easy manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine and imprisonment. *And further,* That at all times when such forcible entry shall be made, and complaint thereof cometh to the justices of the peace of the same county, or to any of them, the same justices or justice shall take sufficient power of the county, and go to the place where such force is made, and if they find any that hold such place forcibly, after such entry made, the same justices or justice shall record such force, and set and impose a fine, not exceeding five pounds, upon every of the said offenders, to be paid by them for their said offences, to the people of this state, and cause every of them so holding by force, to be taken and put into the next gaol of the same county, there to abide convict, by the record of the same justices or justice, until they shall have respectively paid such fine to the people of this state. *And further,* That all the people of the county, as well the sheriffs as others, shall be attendant upon the justices, to go and assist the same justices to arrest such offenders, upon pain of fine and imprisonment.

II. And to the end that the party aggrieved, where any person shall make any such entry by force, or shall enter in peaceable manner, and after, hold by force, may have restitution; Be it further enacted by the authority aforesaid, That where any person doth make any forcible entry into any lands, tenements or other possessions, or them hold forcible, after complaint thereof made within the same county where such entry is made, to the justices of the peace of the same county, or to any one of them, by the party grieved; the same justices or justice, so warned, within a convenient time, shall go to the place where such force is made, taking the power of the county with him or them, if need be, and remove such force, if any there be; and shall, at the costs of the party grieved, cause this act to be duly executed; and whether the persons making such entries be present, or departed before the coming of the same justices or justice, the same justices or justice, in some good town in the same county next to the tenements so entered, or in some other convenient place, according to their discretion, shall have, and either of them shall have authority and power to enquire, by the people of the same county, as well of them that make such forcible entries into lands or tenements, as of them which the same hold with force; and if it be found before any of them, that any doth contrary to this statute, then the said justices or justice shall

cause the lands and tenements so entered or holden as aforesaid, to be resealed, and shall put the party so put out, in full possession of the same lands and tenements so entered or holden as aforesaid. And if any person, after such entry into lands or tenements holden with force, make a feoffment, or other discontinuance to any person, to have maintenance, or to take away and defraud the possessor of his recovery in any wise, if after, in assize or other action thereof to be taken or pursued, in any court of record, by due enquiry thereof to be taken, the same feoffments and discontinuances be duly proved to be made for maintenance as aforesaid; then such feoffments, or other discontinuances, so as before made, shall be void, frustrate, and holden for none.

III. *And be it further enacted by the authority aforesaid,* That when the said justices or justice make such enquiries as aforesaid, they or one of them shall make a warrant or precept, to be directed to the sheriff of the same county, commanding him, in the name of the people of the state of New-York, to cause to come before the same justices or justice, at a certain time and place, therein to be specified, not less than two days from the time of issuing thereof, twenty-four good and lawful men of the same county, duly qualified to serve as jurors in such county, on trials in the supreme court, to enquire of such entries; and shall, at the time of making such warrant or precept, cause a notice in writing, of the issuing thereof, and of the time and place of the return thereof, to be affixed up in some public and suitable place upon the lands or tenements so entered or holden, or delivered to the party against whom such complaint is made, if such party be on the premises. *And further,* That the sheriff shall return issues upon every one of the jurors, at the day of the return of the first precept, twenty shillings, and at every day after, the double. And if any person, who shall be indicted upon this act, before such justices or justice, shall immediately traverse such indictment, then the same justices or justice shall make a warrant or precept, to be directed to the sheriff of the same county, commanding him, in the name of the people of the state of New-York, to cause to come before such justices or justice, at a certain day, not less than four, nor more than eight days from the time of issuing such precept, and at a certain place therein to be specified, twelve good and lawful men of the same county, who shall be such as are or shall be qualified to serve as jurors as aforesaid, to try the same traverse, and the sheriff shall return issues upon every of them, in the manner aforesaid. And if any sheriff be slack, and make no execution duly of such precept to him directed, to make such enquiries, or try such traverse, he shall forfeit twenty pounds for every default, to the party grieved; to be recovered, with costs of suit, in any court of record in the same county where the offence shall be committed, by action of debt, bill, plaint or information.

IV. *And be it further enacted by the authority aforesaid,* That no restitution upon any indictment of forcible entry or holding with force, be made to any person or persons, if the person or persons so indicted, or his or their ancestors, or those whose estate they have in such lands and tenements, hath or have had the oc-

21 Jac. 1. c. 15
31 Ed. c. 11

To issue a
precept for a
jury,

31 Ed. c. 11
1 Caines Rep.
125
4 John. Rep.
198
5 John. Rep.
464

And to notice
the party
thereof.

9 John. Rep.
147

Sheriff to re-
turn issues.

Traverse of
the force to be
tried by a
jury.

2 Caines Rep.
98

Forfeiture on
delinquent
sheriff.

8 H. 6 c. 9 § 5

No restitution
if defendant
or his ances-
tors have been
in possession
three years.

31 EL. c 11
21 Jac. 1 c 15

cupation, or hath or have been in quiet possession, by the space of three whole years together, next before the day of such indictment so found, and his, her or their estate or estates therein not ended or determined, which the party indicted shall and may allege for stay of restitution, and restitution to stay until that be tried, if the party complaining will deny or traverse the same; and then the justices or justice, before whom such indictment shall be found, shall proceed to try the same, in the manner herein before directed.

On conviction,
restitution to
be awarded
and defendant
to pay costs
and damages.

31 EL. c 11

V. *And be it further enacted by the authority aforesaid, That if the allegation or traverse, taken or made by the person or persons indicted, be tried against the person or persons so indicted, either before the same justices or justice, or before the justices of the supreme court, or either of them, in case the proceedings be removed into the supreme court, before such trial, then, and in every such case, restitution shall be awarded by the justices or justice before whom the same shall be tried, or by the supreme court, in the same manner as if no plea or traverse had been made or put in by such persons so indicted; and the person or persons so convicted, shall pay such costs and damages to the party complaining, as shall be assessed by the justices or justice before whom the same is tried, or by the supreme court, if the proceedings shall be removed into the supreme court before such trial as aforesaid; the same costs and damages to be recovered and levied in the same manner, as costs and damages upon judgments in other actions are recovered.*

This act to extend to tenants, for years, &c.

The party disseised or ejected may have assise or trespass against the offenders.

St. Wall. 13
Ed. 1

VI. *And be it further enacted by the authority aforesaid, That this act shall extend as well to tenants for years and guardians, as to such as have estates of freehold.*

And recover
treble damages
and costs.

8 H 6 c 9 § 6

Officers to
execute this
act.

VII. *And be it further enacted by the authority aforesaid, That if any person be disseised or ejected, or put out of any lands or tenements in forcible manner, or put out peaceably, and after holden out with strong hand, or after such entry, any seoffment or discontinuance in any wise thereof be made to defraud and take away the right of the possessor, the party grieved in this behalf shall have assise of novel disscisin, or a writ of trespass against such offenders; and if the party aggrieved recover by assise, or by action of trespass, and it be found by verdict, or in any other manner by due course of law, that the party defendant entered with force, into the lands and tenements, or them, after his entry did hold with force, the plaintiff shall recover his treble damages, with costs of suit, against the defendant.*

VIII. *And be it further enacted by the authority aforesaid, That all mayors, recorders, justices of the peace and aldermen, and sheriffs of cities, shall have, in the same cities, the like power to remove such entries, and in the other articles aforesaid, arising within the same, as the justices of the peace and sheriffs have by this act, in the several counties of this state.*

ELEVENTH SESSION.

CHAP. IX.

An ACT to redress Disorders by common Informers, and to prevent malicious Informations.

Passed 6th February, 1788.

[V.S. v. 2. 341. J.&V. v. 2. 188. Gr. v. 2. 16. K.&R. v. 1. 106.]

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That every informer, upon any penal statute, made or to be made, shall exhibit or commence his suit in proper person, and pursue the same only by himself, or by his attorney in court, and that no person shall be admitted or received to pursue against any person or persons, upon any penal statute, but by action of debt, bill, plaint or information, and not otherwise, nor shall have nor use any deputy or deputies at all; and that upon every such information which shall be exhibited, a special note be made of the very day, month and year of the exhibiting thereof, into any office, or to any officer who lawfully may receive the same, without any manner of antedate thereof to be made, and that the same information shall be accounted and taken to be of record from that time forward, and not before; and that no process be sued out upon such information, until the information be exhibited in form aforesaid. *And further,* That upon every process to be sued out upon any such action, bill, plaint or information, to compel the appearance of any defendant, shall be endorsed, as well the name of the party who pursueth the same process, as also the title of the statute upon which the action or information, in that behalf had or made, is grounded; and that every clerk, making out or issuing process, contrary to the tenor and provision of this act, shall forfeit and lose three pounds for every such offence; the one half to the use of the people of this state of New-York, and the other half to the party against whom any such defective process shall be awarded; to be recovered, with costs, in any court having cognizance thereof, by action of debt, bill, plaint or information.

II. *And be it further enacted by the authority aforesaid,* That in all informations to be exhibited, and in all bills, plaints and declarations in any action or suit, to be commenced against any person or persons, either by or on behalf of the people of the state of New-York, or by any other, or on the behalf of the people of the state of New-York, and any other, for or concerning any offence committed or to be committed against any penal statute, made or to be made, the offence shall be laid and alleged to have been committed in the county where such offence was in truth committed, and not elsewhere; and if the defendant to any such information, action or suit, pleadeth that he oweth nothing, or that he is not guilty, and the plaintiff or informer in such information, action or suit, upon evidence to the jury that shall try such issue, shall not both prove the offence laid in the said information, action or suit, and that the same offence was committed in that county, then the defendant and defendants shall be found not guilty. *Provided always,* That this act, or any thing herein contained, shall not extend to the laying or alleging of any of-

Informers on penal statutes how to sue

18 El. c. 5. § 1
11 H. 7. c. 3
27 El. c. 10
31 El. c. 5

Time of filing information to be indorsed.

Name of the party and title of the statute to be indorsed on the process

Or clerk issuing the same to forfeit 3l.

In all informations, &c. the offence to be laid in the proper county
31 El. c. 5. § 3, 4
31 Jac. 4. § 2, 5

Or defendant to be acquitted

What offences may be laid in any county

fence, in any declaration, bill, plaint or information, for or concerning any maintenance, champerty, buying of titles, embrocary, or extortion, or for or concerning any matter of corrupt usury, or for or concerning any custom, duty or impost, upon any goods, wares or merchandize, imported or to be imported into this state; but that every such offence shall or may be laid in any county, at the pleasure of any such informers.

Defendant may plead the general issue, and give the special matter in evidence

18 El. c. 5
31 El. c. 5
21 Jac. c. 4

III. *And be it further enacted by the authority aforesaid*, That if any information, suit or action, shall be brought or exhibited against any person or persons, for any offence committed or to be committed against the form of any penal law made or to be made, either by or on behalf of the people of the state of New-York, or by any other, or on the behalf of the people of the state of New-York, and any other, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, as if pleaded, would have been a good and sufficient matter in law to have discharged such defendant or defendants, against the said information, suit or action; and the said matter shall be as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar or discharge of such information, suit or action.

What process in penal actions

21 Jac. 1. c. 4

IV. *And be it further enacted by the authority aforesaid*, That the like process in any action, bill, plaint, information or suit, to be commenced, sued, or prosecuted upon any penal statute, made or to be made, shall be had and awarded, to all intents and purposes, as in an action of trespass with force and arms at the common law.

Citizens may appear by attorney without bail

20 El. c. 5 § 5
31 El. c. 10, § 20

V. *And be it further enacted by the authority aforesaid*, That if any citizen of this state, or of any of the United States of America, shall be sued or informed against in the supreme court, or in the court of exchequer, upon any penal law, made or to be made, where such person is bailable by law, or where by the leave or favor of the court, such person may appear by attorney, then, in all and every such case, the person so impleaded or sued, shall and may, at the day and time contained in the first process, served for his or her appearance, appear by attorney of the same court where the process is returnable, to answer and defend the same, and shall not be urged to a personal appearance, or to put in bail for the answering of such suit.

When the trial may be at bar

18 El. c. 5

VI. *And be it further enacted by the authority aforesaid*, That no jury shall be compelled to appear in the supreme court, or court of exchequer, for the trial of any issue in any action, information or suit, upon any penal statute, for any offence committed above thirty miles from the place where the same court shall sit, except in case where the attorney-general for the time being, for some reasonable cause in that behalf to be shewed, shall require the same to be tried at the bar in either of the said courts, which request shall be noted on the back of the writ of *distringas* thereupon awarded, to the end the sheriff, or his bailiff, may and shall signify the same to the jury that are in such case impannelled.

VII. *And be it further enacted by the authority aforesaid,* That if any person or persons shall sue with good faith, any action popular, and the defendant or defendants in the same action, plead any manner of recovery in any action popular, in bar of the said action, or else that the same defendant or defendants plead, that he or they, before that time, barred any plaintiff or plaintiffs in any such action popular, that then the plaintiff or plaintiffs, in the action taken with good faith, may aver that the said recovery in the said action popular was had by covin, or else aver, that the said plaintiff or plaintiffs so barred, was or were barred in the said action popular, by covin; and then, if after such averment, the said collusion or covin so averred, be lawfully found, the plaintiff or plaintiffs in the action sued with good faith, shall recover, according to the nature of the action, and have execution upon the same, in like manner as if no such action or recovery had been before had. *And further,* That in every such action popular, wherein the defendant or defendants shall be lawfully condemned, or attainted of covin or collusion as aforesaid, every such defendant shall have imprisonment of two years, by process of *capias*, to be sued within the year after such judgment had, or at any time after, till the said defendant or defendants shall be had and imprisoned as aforesaid, and that as well at the suit of the people of the state of New-York, as of every other that will sue in that behalf, and such process shall and may be pursued to outlawry. *And moreover,* No release, of any common person made or to be made to any such defendant or defendants, whether before or after any action popular, or indictment of the same had or commenced, or made or pending the same action, shall be in any wise available or effectual to let, surcease or bar the said action, indictment, process or execution. *Provided always,* That no plaintiff or plaintiffs be, in any wise, received to aver any covin in an action popular, where the point of the same action, or else the covin or collusion, have been once tried, or lawfully found with the plaintiff or plaintiffs, or against them, by the verdict of twelve men, and not otherwise.

Recovery by covin no plea in an action sued with good faith

4 H. 7, c. 20

Defendant convicted of covin to be imprisoned two years

Release of any common person no bar

4 H. 7, c. 20

Covin not to be averred where already tried by a jury

VIII. *And be it further enacted by the authority aforesaid,* That no informer or plaintiff, in any action popular, shall or may compound or agree with any person or persons, who shall offend, or shall be surmised to have offended against any penal statute, made or to be made for such offence committed, or pretended to have been committed, but after answer made in court to the information or suit in that behalf exhibited or prosecuted, nor after answer, but by the order or consent of the court in which the same information or suit is or shall be depending. *And further,* That if any such informer, or plaintiff as aforesaid, shall willingly delay his suit, or shall discontinue or become non-suit in the same, or shall have the trial or matter passed against him therein, by verdict or judgment of law; that then, and in every such case, the same informer or plaintiff shall yield, satisfy and pay unto the party defendant, his costs, charges and damages, to be assigned by the court in which the same suit is or shall be attempted.—For the recovery whereof, every such defendant shall, immediately upon the same costs, charges and damages assigned, have

No informer or plaintiff to compound without the consent of the court

2 John. Rep. 405

9 John. Rep. 251

18 EL. c. 5 § 3

Upon discontinuance, non-suit or verdict, to pay costs

18 EL. c. 5 § 3

his execution for the same, to be awarded unto him out of the same court in which the same shall be so assigned as aforesaid, as in other cases of execution.

Penalty on
informers for
misconduct

18 El. c 5 § 4
31 El. c 5 § 1
27 El. c 10

IX. *And be it further enacted by the authority aforesaid,* That if any person or persons (except the clerks of the court only for making out of process otherwise than is above appointed) shall offend in suing out of process, making of composition, or other misdemeanor, contrary to the true intent and meaning of this act, or shall, by colour, or pretence of process, or without process, upon colour or pretence of any matter of offence, against any penal law, make any composition or take any money, reward, or promise of reward, for himself or to the use of any other, without the order or consent of some court of record; that then, he or they so offending, being thereof lawfully convicted, shall forever be disabled to pursue, or be plaintiff or informer, in any suit or information upon any statute popular or penal, and shall also, for every such offence, forfeit and lose the sum of forty pounds; the one half thereof to the people of the state of New-York, and the other half to the party grieved thereby, to be recovered, with costs, in any court of record, by action of debt, bill, plaint or information; and that justices of oyer and terminer, justices of gaol delivery, and justices of the peace, in their sessions, shall have full power and authority to hear and determine all offences to be committed or done, contrary to the true intent and meaning of this act.

This act not
to apply to
persons to
whom any pe-
nalty is spe-
cially given

X. *Provided always, and be it further enacted by the authority aforesaid,* That this act shall not extend to restrain any certain person, body politic or corporate, to whom or to whose use any forfeiture, penalty or suit, is or shall be specially limited or granted, by virtue of any statute, and not generally to any person who will sue, but that every such certain person, body politic or corporate, may, in such case, sue, inform and pursue, as he or they might have done, if this act had never been made.

Clerk of the
supreme court
not to receive
any informa-
tion for trea-
son or misde-
meanor before
recognizance
to be deliver-
ed to him

A & S, W & M
c 18

To make en-
try thereof up-
on record

When infor-
mer to pay

XI. And to prevent malicious informations in the supreme court of judicature of this state, for trespasses, batteries and other misdemeanors; *Be it further enacted by the authority aforesaid,* That the clerk of the supreme court for the time being, shall not, without express order to be given, by the said court, receive or file any information, for any trespass, battery, or other misdemeanor, or seal any process thereupon, before he shall have delivered to him a recognizance from the person or persons procuring such information or informations to be exhibited, to be entered into, to the person or persons against whom such information or informations is or are to be exhibited, with sufficient security, in the penalty of twenty pounds, that he, she or they will effectually prosecute such information or informations, and abide by and observe such orders as the said court shall direct (which recognizance any one of the judges of the said supreme court is empowered to take); and after the taking and receipt whereof, the clerk of the said court shall make an entry thereof upon record, and shall file a memorandum in some public place in his office, that all persons may resort thereunto without fee. And in case any person or persons, against whom any information or informa-

tions for the causes aforesaid, or any of them, shall be exhibited, shall appear thereunto, and plead to issue, and the prosecutor, or prosecutors of such information or informations, shall not, at his and their own proper costs and charges, at or before the second court (in which the same might be tried) next after issue joined therein, procure the same to be tried; or if upon such trial, a verdict pass for the defendant or defendants, or in case the said informer or informers procure a *nolle prosequi* to be entered, then, in any of the said cases, the said supreme court is hereby authorised to award to the said defendant or defendants, his or their costs, unless the judge before whom such information or informations shall be tried, shall, at the trial of such information or informations, in open court, certify upon record, that there was a reasonable cause for exhibiting the same. And in case the said informer or informers shall not, within ten days next after the said costs shall be taxed, and demand made thereof, pay to the said defendant or defendants, the said costs, then the said defendant or defendants shall have the benefit of the said recognizance, to compel them thereunto.

Unless the judge certify that there was reasonable cause

CHAP. X.

An ACT for the more effectual Discovery of the Death of Persons beyond Sea, or absenting themselves, upon whose Lives Estates do depend.

Passed 6th February, 1788.

[J.&V. v. 2. 191. Gr. v. 2. 20. K.&R. v. 1. 111.]

WHEREAS divers persons have estates for one or more life or lives, or for one or more year or years, determinable upon one or more life or lives; and it hath often happened, that such person or persons, for whose life or lives such estates are held, have gone beyond sea, or so absented themselves for many years, that the lessors, reversioners, or persons in remainder, cannot find out whether such person or persons be alive or dead; Therefore,

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if such person or persons, for whose life or lives such estates have been, or shall be granted or held as aforesaid, shall remain beyond sea, or absent himself, herself or themselves in this state, or elsewhere, by the space of seven years together, and no sufficient and evident proof be made of the life or lives of such person or persons respectively, in any action commenced or to be commenced for the recovery of such tenements, by the lessors or reversioners, or other person or persons entitled to the same estate, upon the death of such person or persons; in every such case, the person or persons, upon whose life or lives such estate depended, shall be accounted as naturally dead; and in every action brought for the recovery of the said tenements by the lessors or reversioners, or other person or persons entitled to the same, upon the death of such person or persons, and their heirs or assigns, the judges before whom such action shall be brought, shall direct the jury to give their verdict as if the person or persons so remain-

Persons upon whose lives estates depend, being absent seven years, to be deemed dead.

19 Carr. 2. c. 6
6 Ann c. 18

ing beyond sea, or otherwise absenting himself, herself or themselves were dead.

Persons evicted may re-enter, on proof that such absent person is living

6 Ann c. 18

And recover damages

II. *Provided always, and be it further enacted by the authority aforesaid,* That if any person or persons, shall be evicted out of any lands or tenements, by virtue of this act, and afterwards, if the person or persons upon whose life or lives such estate or estates depend, shall return again from beyond sea, or shall on proof in any action to be brought for the recovery of the same, be made appear to be living, or to have been living at the time of the eviction, that then, and from thenceforth, the tenant or lessee who was ousted of the same, his, her or their executors, administrators or assigns, shall or may re-enter, re-possess, have, hold and enjoy the said lands or tenements, in his, her or their former estate, for and during the life or lives, or so long a term as the said person or persons upon whose life or lives the said estate or estates depend, shall be living; and also shall, upon an action or actions, to be brought by him, her or them, against the lessors, reversioners or tenants in possession, or other persons respectively, which since the time of such eviction received the profits of the said lands or tenements, recover for damages the full profits of the said lands or tenements, respectively, for and from the time that he, she or they were ousted of the said lands or tenements, and kept and held out of the same, by the said lessors, reversioners, tenants, or other persons who, after the said eviction, received the profits of the said lands or tenements, or any of them respectively, as well in the case when the said person or persons upon whose life or lives such estate or estates did depend, are or shall be dead at the time of bringing of the said action or actions, as if the said person or persons were then living.

6 Ann c. 18

Persons claiming estates in remainder, after the death of an infant, married woman, &c. on affidavit that he hath cause to believe that such infant, &c. is dead, may apply to the chancellor

Who is to order such infant, &c. to be produced

III. *And whereas* divers persons, as guardians and trustees for infants, and husbands in right of their wives, and other persons, having estates or interests determinable upon a life or lives, have continued to receive the rents and profits of such lands or tenements, after the determination of their said particular estates or interests: *And whereas* the proof of the death of the persons on whose lives such particular estates or interests depended, is very difficult, and several persons have been, and may be thereby defrauded; For remedy whereof, and for preventing such fraudulent practices in future, *Be it further enacted by the authority aforesaid,* That any person or persons who hath or have, or shall have any claim or demand in or to any remainder, reversion or expectancy in or to any estate, after the death of any person within age, married woman, or any other person or persons whatsoever, upon affidavit, made in the court of chancery in this state, by the person or persons so claiming such estates, of his, her or their title, and that he, she or they hath or have cause to believe that such infant, married woman, or other person or persons, is or are dead, and that his, her or their death is concealed by such guardian, trustee, husband, or any other person or persons, shall and may once a year, if the person or persons aggrieved shall think fit, move the chancellor for the time being, to order, and he is hereby authorised and required to order such guardian, trustee, husband, or other person or persons concealing or suspected

to conceal such person or persons, on whose life or lives such estate doth, shall or may depend, at such time and place as the said court shall direct on personal or other due service of such order, to produce and shew to such person or persons (not exceeding ^{8 Ann c. 18} two) as shall, in such order, be named by the party or parties prosecuting such order, such infant, married woman, or other person or persons aforesaid; and if such guardian, trustee, husband, or such other person or persons as aforesaid, shall refuse or neglect to produce or shew such infant, married woman, or such other person or persons, on whose life or lives any such estate doth or shall depend, according to the directions of the said order, that then the said court of chancery is hereby authorised and required to order such guardian, trustee, husband, or other person or persons, to produce such infant, married woman, or other person or persons so concealed, in the said court of chancery, or otherwise before commissioners to be appointed by the said court, at such time and place as the court shall direct; two of which commissioners shall be nominated by the party or parties prosecuting such order, at his, her or their costs and charges; and in case such guardian, trustee, husband, or other person or persons, shall refuse or neglect to produce such infant, married woman, or other person or persons so concealed, in the court of chancery, or before such commissioners, whereof return shall be made by such commissioners, and that return filed in the office of the register of the said court of chancery; then, in any or either of the said cases, the said infant, married woman, or such other person or persons so concealed, shall be taken to be dead; and it shall and may be lawful for any person or persons claiming any right, title or interest in reversion or remainder, or otherwise, after the death of such infant, married woman, or such other person or persons so concealed as aforesaid, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person or persons so concealed were actually dead.

If such infant, &c. is not produced, such infant, &c. shall be taken to be dead.

And claimants may enter.

On affidavit, that infant is beyond sea, or out of this state claimant may send person to view such infant, &c.

13. Ed. 1. c. 15.

IV. *And be it further enacted by the authority aforesaid,* That if it shall appear to the said court, by affidavit, that such infant, married woman, or other person or persons, for whose life or lives, such estate is holden, is or are, or lately was or were, at some certain place or places, beyond sea, or elsewhere out of this state, in the said affidavit to be mentioned, it shall and may be lawful for the party or parties prosecuting such order as aforesaid, at his, her or their costs and charges, to send one or both the said persons appointed by the said order, to view such infant, married woman, or other person or persons, for whose life or lives any such estate is or shall be holden; and in case such guardian, trustee, husband, or other person or persons, concealing or suspected to conceal such person or persons as aforesaid, on whose life or lives any such estate doth or shall depend, shall refuse or neglect to produce, or procure to be produced, to such person or persons appointed by the said order, a personal view of such infant, married woman, or other person or persons, for whose life any such estate is or shall be holden; that then and in such case, the person or persons appointed by such order, are hereby required to make a true return of such refusal or neglect to the said court, which return shall be

filed in the office of the register of the said court, and thereupon such infant, married woman, or other person or persons, for whose life or lives any such estate is or shall be holden, shall be taken to be dead; and it shall and may be lawful for any person or persons claiming any right, title or interest in reversion, remainder or otherwise, after the death of such infant, married woman, or other person or persons, for whose life or lives any such estate is or shall be holden, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person or persons, for whose life or lives any such estate is or shall be holden, were actually dead.

Persons evicted
may re-enter,
on proof
that such ab-
sent person is
living.

V. Provided always, and be it further enacted by the authority aforesaid, That if it shall afterwards appear, upon proof, in any action to be brought, that such infant, married woman, or other person or persons, for whose life or lives any such estate is or shall be holden, were alive at the time of such order made, that then it shall be lawful for such infant, married woman, guardian, trustee, or other person or persons, having any estate or interest determinable upon such life or lives, to re-enter upon the said lands, tenements or hereditaments, and for such infant, married woman, or other person or persons, having any estate or interest determinable upon such life or lives, his, her or their executors, administrators or assigns, to maintain any action or actions against those who, since the said order, received the profits of such lands, tenements or hereditaments, or their executors or administrators, and therein to recover full damages for the profits of the same received, from the time that such infant, married woman, or other person or persons, having any estate or interest determinable upon such life or lives, were ousted of the possession of such lands, tenements or hereditaments.

G. Ann. c. 12.

And recovers
damages.

On proof that
such person
is living
and that he
is the person
to whom the
estate is due in
possession.

VI. Provided also, and be it further enacted by the authority aforesaid, That if any such guardian, trustee, husband or other person or persons, holding or having any estate or interest determinable upon the life or lives of any other person or persons, shall, by affidavit, or otherwise, to the satisfaction of the said court, make appear, that he, she or they, hath or have used his, her or their utmost endeavours to procure such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend, to appear in the said court of chancery, or elsewhere, according to the order of the said court in that behalf made, and that he, she or they cannot procure or compel such infant, married woman, or other person or persons, so to appear, and that such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend, is, are or were living at the time of such return made and filed as aforesaid; then it shall be lawful for such person or persons to continue in the possession of such estate, and receive the rents and profits thereof, for and during the infancy of such infant, and the life or lives of such married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend, as fully as he, she or they might have done if this act had not been made.

VII. *And be it further enacted by the authority aforesaid, That* every person, who, as guardian or trustee for an infant, and every husband seised in right of his wife only, and every other person having an estate determinable upon any life or lives, who, after the determination of such particular estates or interests, without the express consent of him, her or them, who are or shall be next and immediately entitled upon, and after the determination of such particular estates or interests, shall hold over and continue in possession of any messuages, lands, tenements or hereditaments, shall be, and are hereby adjudged to be trespassers; and that all and every person and persons, his, her and their executors and administrators, who are or shall be entitled to such messuages, lands, tenements or hereditaments, upon or after the determination of such particular estates or interests, shall and may recover in damages against every such person or persons so holding over as aforesaid, and against his, her or their executors or administrators, the full value of the profits received during such wrongful possession as aforesaid.

Guardians, or holding estate, a determination of life or infant, or adjudged trespassers;

6 Ann, c. 18]

And persons entitled to recover damages

CHAP. XI.

An ACT for rendering the Proceedings upon Writs of Mandamus and Informations, in the nature of Quo Warranto, more speedy and effectual.

Passed 6th February, 1788.

[J.&V. v. 2. 95.—Gr. v. 2. 24.—K.&R. v. 1. 116.]

I. *BE it enacted by the people of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That* if any mandamus shall issue out of the supreme court, directed and delivered to any person or persons, who, by the laws of this state, are required to make a return to such writ of mandamus, such person or persons shall make his or their return to the first writ of mandamus.

Return to be made to the first writ of mandamus

9 Ann, c. 29

II. *And be it further enacted by the authority aforesaid, That* from and after the passing of this act, as often as any writ of mandamus shall issue out of the said supreme court, and a return shall be made thereunto, it shall and may be lawful to and for the person or persons suing or prosecuting such writ of mandamus, to plead to or traverse all or any the material facts contained within the said return, to which the person or persons making such return shall reply, take issue or demur; and such further proceedings, and in such manner, shall be had therein for the determination thereof, as might have been had, if the person or persons suing such writ, had brought his or their action on the case for a false return; and if any issue shall be joined on such proceedings, the person or persons suing such writ, shall and may try the same in such place as an issue joined in such action on the case should or might have been tried; and in case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by *nil dicit*, or for want of a replication or other pleading, he or they shall recover his or their dam-

The material facts may be traversed and the proceedings thereon

9 Ann, c. 29, § 2

Party prosecuting to recover damages and costs

ges and costs, in such manner as he or they might have done in such action on the case as aforesaid; and such damages and costs shall and may be levied by *feri facias*, or *capias ad satisfaciendum*, as in other cases, and a peremptory mandamus shall be granted without delay, for him or them for whom judgment shall be given, as might have been, if such return had been adjudged insufficient; and in case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid.

The person making such return to recover costs

Persons against whom damages are recovered not liable to any other suit

III. *Provided always, and be it further enacted by the authority aforesaid*, That if any damages shall be recovered by virtue of this act, against any such person or persons making such return to such writ as aforesaid, he or they shall not be liable to be sued in any other action or suit, for the making such return; any law, usage or custom to the contrary thereof notwithstanding.

How informations in the nature of a *quo warranto* to be exhibited against persons who intrude into offices, &c.

9 Ann. c. 30
6 Ed. 1.
18 Ed. 1. st. 3
14 Ed. 1. st. 3

Where several persons may be included in one information

3 John. ca. 79
1 East. 38

How they shall appear and plead

IV. *And be it further enacted by the authority aforesaid*, That in case any person or persons shall usurp, intrude into, or unlawfully hold and execute any office or franchise within this state, it shall and may be lawful to and for the attorney-general, with the leave of the said supreme court, to exhibit one or more information or informations, in the nature of a *quo warranto*, at the relation of any person or persons desiring to sue or prosecute the same, who shall be mentioned in such information or informations, to be the relator or relators, against such person or persons so usurping, intruding into, or unlawfully holding and executing, any such office or franchise, and to proceed therein in such manner as is usual in cases of informations, in the nature of a *quo warranto*; and if it shall appear to the said supreme court, that the several rights of divers persons to the same office or franchise, may properly be determined on one information, it shall and may be lawful for the said supreme court, to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons against whom such information or informations, in the nature of a *quo warranto*, shall be sued or prosecuted, shall appear and plead as of the same term in which the said information or informations shall be filed, unless the said supreme court shall give further time to such person or persons, against whom such information or informations shall be exhibited, to plead; and such person or persons who shall sue or prosecute such information or informations, in the nature of a *quo warranto*, shall proceed thereupon with the most convenient speed that may be; any law or usage to the contrary thereof notwithstanding.

Judgment of ouster
9 Ann. c. 29,
§ 5

V. *And be it further enacted by the authority aforesaid*, That in case any person or persons against whom any information or informations, in the nature of a *quo warranto*, shall, in any of the said cases, be exhibited in the said supreme court, shall be found or adjudged guilty of an usurpation or intrusion into, or unlawfully holding and executing, any of the said offices or franchises, it shall and may be lawful to and for the said supreme court, as well to give judgment of ouster, against such person or persons, of and from any of the said offices or franchises, as to fine such person or persons respectively, for his or their usurping, intruding

into or unlawfully holding and executing any such office or franchise; and also to give judgment that the relator or relators, in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants, in such information, he or they for whom such judgment shall be given, shall recover his or their costs therein expended, against such relator or relators; such costs to be levied in manner aforesaid.

Relators to recover costs;

And if judgment for defendant, to pay costs.

V1. *And be it further enacted by the authority aforesaid, That* it shall and may be lawful to and for the said supreme court, to allow to such person or persons respectively, to whom any writ of mandamus shall be directed, or against whom any information, in the nature of a *quo warranto*, in any of the cases aforesaid, shall be sued or prosecuted, or to the person or persons who shall sue or prosecute the same, such convenient time respectively to make a return, plead, reply, rejoin or demur, as to the said supreme court shall seem just and reasonable; any thing herein contained to the contrary thereof in any wise notwithstanding.

Time for making return and pleading—

9. Ann. c. 30.

CHAP. XIV.

An Act for ascertaining the measure of Land.

Passed 7th February, 1788.

[J.&V. v. 2. 202.—Gr. v. 2. 32.—K.&R. v. 1. 118.]

BE it enacted by the people of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That an acre of land shall contain one hundred and sixty square perches or rods; each perch or rod being in length, five yards and one half of one yard; and each yard three feet; and each foot twelve inches; so that when an acre of land shall be sixteen rods in length, it shall be ten rods in breadth.

Measure of land ascertained

24. H. S. c. 4.
33. Ed. 1. st. 6

CHAP. XVI.

An ACT against buying and selling of Offices.

Passed 7th February, 1786.

[J.&V. v. 2. 205.—Gr. v. 2. 34.—K.&R. v. 1. 118.]

FOR the avoiding of corruption in officers, and to the intent that persons worthy and meet to be advanced to places where justice is to be administered, or any service of trust executed, and no other, should hereafter be preferred to the same:

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That* if any person or persons, at any time hereafter, bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, or receive, have or take any money, fee, reward, or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee or reward,

Any person selling an office, or deputation of an office, to lose such office;

5 R. & Ed. 6 c. 16.
12. R. 2. c. 2.

or other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them, or to the intent that any person should have, exercise or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them; then, all and every such person and persons who shall so bargain or sell any such office or offices, deputation or deputations, or who shall take any money, fee, reward or profit, for any such office or offices, deputation or deputations of any such office or offices, or any part of any of them, or who shall take any promise, agreement, covenant, bond or assurance, for any money, fee, reward or profit to be given for any such office or offices, deputation or deputations, of any such office or offices, or any part of any of them, shall not only lose and forfeit all his and their right and estate which such person or persons shall then have of, in or to such office or offices, deputation or deputations, or any part of any of them, or of, in or to the gift or nomination of such office or offices, deputation or deputations, for the which office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any such person or persons shall so make any such bargain or sale, or take or receive any sum of money, fee, reward or profit, or any promise, agreement, covenant, bond or assurance, to have or receive any money, fee, reward or profit; but also, all and every such person or persons, who shall give or pay any sum of money, reward or fee, or shall make any promise, agreement, covenant, bond or assurance, for any such office or offices, or for the deputation or deputations of any such office or offices, or any part of any of them, shall immediately, by and upon the same fee, money or reward, given or paid, or upon any such promise, agreement, covenant, bond or assurance, had or made for any fee, sum of money, or reward, to be paid or given as aforesaid, be adjudged a disabled person in the law, to all intents and purposes, to have, exercise or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee or reward, or make any promise, agreement, covenant, bond, or other assurance, to give or pay any sum of money, fee or reward. *And further,* That all and every such bargains, sales, promises, agreements, covenants, bonds and assurances, as be before specified, shall be void to and against him and them, by whom any such bargain, sale, promise, agreement, covenant, bond or assurance, shall be had or made.

536 Ed. 6. c. 16

And the purchaser of such office or deputation, disabled to hold such office:

And such bargains to be void.

But all judgments, acts, &c. of offenders, prior to their removal from office, to be good in law.
536 Ed. 6. c. 16

II. *Provided always, and be it further enacted by the authority aforesaid,* That if any person or persons do offend in any thing contrary to the tenor and effect of this statute, yet notwithstanding all judgments given, and all other act and acts executed or done by any such person or persons so offending, by authority or colour of the office or deputation, which ought to be forfeited, or not occupied, or not enjoyed by the person so offending as aforesaid, after the said offence so by such person committed or done, and before such person so offending, for the same offence he removed from the exercise, administration and occupation of the said office or deputation, shall be and remain good and sufficient

in law, to all intents, constructions and purposes in such like manner and form as the same should or ought to have remained and been, if this statute had not been made.

CHAP. XIX.

An ACT for the prevention and punishment of Extortion.

Passed 7th February, 1788.

[J.&V. v. 2. 211.—Gr. v. 2. 41.—K.&R. v. 1. 120.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That no judge, justice, sheriff, or other officer whatsoever, ministerial or judicial, shall receive or take any fee or reward to do his office, but such as is or shall be allowed by the laws of this state; and if any doth, he shall restore to the party grieved, double damages. *And further,* That if any judge, justice, sheriff or other officer aforesaid, hath received or taken, or shall receive or take, by colour of his office, any fee or reward whatsoever, not allowed by the laws of this state, for doing his office, and be thereof convicted, either at the suit of the party grieved, in any court of record, or at the suit of the people of this state, in the supreme court, or before justices of gaol delivery, or before justices assigned to hear and determine, or in any court of general sessions of the peace, he shall be punished by fine or imprisonment, or both, according to the discretion of the court, in which such conviction shall be had.

Any officer taking unlawful fees to pay double damages,

And to be punished by fine and imprisonment

3. Ed. 1. c. 34.
13 Ed. 1. c. 34.
31 Ed. c. 5

CHAP. XXI.

An ACT making it Felony in such who shall levy any Fine, suffer any Recovery, or acknowledge any Deed, Recognizance, Bail, or Judgment in the Name of another, not being privy and consenting thereto.

Passed 7th February, 1788.

[J.&V. v. 2. 213.—Gr. v. 2. 43.—K.&R. v. 1. 120.]

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That all and every person and persons, who shall acknowledge or procure to be acknowledged, any fine or fines, recovery or recoveries, deed or deeds, recognizance or recognizances, bail or bails, judgment or judgments, in the name or names of any other person or persons not privy or consenting to the same, and all and every person and persons who shall, before any person or persons authorised to take bail or bails, represent or personate any other person or persons, whereby the person or persons, so represented or personated, may be liable to the payment of any sum or sums of money, for debt or damages, to

Person acknowledging a fine, or, &c. in the name of or personating another as bail, to be adjudged guilty of felony

31 Jac. 1. c. 20

be recovered in the same suit or action wherein the person or persons are represented or personated, as if he or they had really acknowledged and entered into the same bail or bails, being lawfully convicted or attainted thereof, shall be adjudged guilty of felony.

Not to extend to attorneys of record acknowledging judgment

II. *Provided always, and be it further enacted by the authority aforesaid,* That this act shall not extend to any judgment or judgments acknowledged by any attorney or attorneys of record, for any other person or persons, against whom any such judgment or judgments shall be had or given.

CHAP. XXII.

An ACT to prevent stealing and avoiding Records.

Passed 7th February, 1788.

[J.&V. v. 2. 213.—Gr. v. 2. 43.—K.&R. v. 1. 121.]

Persons stealing records, to be adjudged guilty of felony

§ H 6, c 13

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That if any record or parcel of the same, writ, return, panel, process, or other proceeding in the court of chancery, supreme court, exchequer, or in any other court of record, or in the office of the secretary of this state, or in the office of the clerk of any city or county in this state, hath been or hereafter shall be stolen, or willingly taken away, withdrawn or avoided, by any clerk, or by any other person, by reason whereof any judgment shall be reversed, then every such stealer, taker-away, withdrawer, or avoider, their procurers, counsellors and abettors, being convicted or attainted thereof, according to the due course of law, shall be adjudged guilty of felony.

This act not to extend to amendments or entries made by order of court

II. *Provided always, and be it further enacted by the authority aforesaid,* That this act shall not extend to any amendment or entry made or to be made by any rule, order, judgment or decree of any court.

CHAP. XXIII.

An ACT declaring it to be Felony in Servants to embezzle their Master's Goods.

Passed 7th February, 1788.

[J.&V. v. 2. 214.—Gr. v. 2. 43.—K.&R. v. 1. 122.]

Servants intrusted by their masters, &c. with money, goods, &c. and going away with the same, with intent to steal them.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if any servant to whom any money, goods or chattels heretofore have been, or hereafter shall be, by his or her master or mistress, delivered to be safely kept, hath with-

drawn himself or herself, from his or her said master or mistress, and gone away, or hereafter shall withdraw himself or herself from his or her said master or mistress, and go away with the said money, goods or chattels, or any part thereof, to the intent to steal the same, and defraud his or her said master or mistress thereof, contrary to the trust and confidence in him or her reposed, by his or her said master or mistress; or being in the service of his or her said master or mistress, without assent or commandment of his or her said master or mistress, hath embezzled, or shall embezzle the same money, goods or chattels, or any part thereof, or otherwise hath converted, or shall convert the same to his or her own use, with like purpose to steal the same, then, and in every such case, if the said money, goods or chattels, that any such servant hath gone away with, or shall go away with, or which such servant hath embezzled or shall embezzle, with purpose to steal the same as foresaid, be of the value of twenty shillings, or above; the same false, fraudulent, and untrue act or demeanor, shall be adjudged felony. But this act shall not extend to any apprentice, nor to any person within the age of eighteen years, going away with the goods or chattels of his or her master or mistress, or otherwise converting the same to his or her own use, during the time of his or her apprenticeship, or being within the age of eighteen years; and every apprentice, and every other person under the age of eighteen years, doing or offending contrary to this act, shall stand, and be in like case as if this act had not been made.

^{21 H. 3, c. 7}
^{5 Ed. c. 10}

Or embezzle them,

To the value of 20s. or more, to be adjudged guilty of felony.

Not to extend to apprentices or persons under 18 years of age.

^{21 H. 3, c. 7}
⁵

CHAP. XXIV.

An ACT to restrain all persons from marrying, until their former Wives and former Husbands be dead.

Passed 7th February, 1788.

[J.&V. v. 2. 214.—Gr. v. 2. 44.—K.&R. v. 1. 122.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That if any person or persons being married, or who hereafter shall marry, do at any time marry any person or persons, the former husband or wife being alive, then every such offence shall be felony; and the party and parties so offending, shall receive such and the like proceedings, trial, judgment and execution, in the county where such person or persons shall be apprehended, as if the offence had been committed in the same county where such person or persons shall be taken or apprehended; but neither this act, nor any thing therein contained, shall extend to any person or persons whose husband or wife shall be continually remaining without the United States of America, by the space of five years together, or whose husband or wife shall have absented him or herself the one from the other by the space

Persons marrying others, during the lives of their former husbands or wives, guilty of felony.

Where offenders shall be tried.

^{1 Jas. 1. c. 11}
^{4 Ed. 1 st. 3 c. 5}

To what cases this act does not extend

^{1 Ed. 6 c. 12}
^{1 Ed. 6 c. 3}

^{7 John. Rep.}
³¹⁴ of five years together, the one of them not knowing the other to be living within that time ; nor to any person or persons who are, or shall be, at the time of such marriage, divorced by the sentence or decree of any court having cognizance thereof ; nor to any person or persons where the former marriage hath been, or shall be, by the sentence or decree of any such court, declared to be void and of no effect ; nor to any person or persons for or by reason of any former marriage had or made, or to be had or made within the age of consent.

CHAP. XXXI.

An ACT for apprehending and punishing disorderly Persons.

Passed 9th February, 1788.

[V. 8. v. 1. 4. 122.—J.&V. v. 2. 221.—Gr. v. 2. 52.—K.&R. v. 1. 123.]

Who are to be
deemed disorderly persons

17 Geo. 2 c. 5
30 El. c. 4
1 J. 1 c. 4
15 and 14
Car. 2, c. 12

On conviction
to be com-
mitted to
Bridewell or
house of cor-
rection.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That all persons who threaten to run away and leave their wives or children to the city or town, and all persons who shall unlawfully return to the city or town from whence they shall respectively have been legally removed by order of two justices of the peace, without bringing a certificate from the city or town whereto they respectively belong ; and also all persons who not having wherewith to maintain themselves, live idle without employment, and also all persons who go about from door to door, or place themselves in the streets, highways or passages, to beg in the cities or towns where they respectively dwell, and all jugglers, and all persons pretending to have skill in physiognomy, palmistry, or like crafty science, or pretending to tell fortunes, or to discover where lost goods may be found ; and all persons who run away and leave their wives or children, whereby they respectively become chargeable to any city or town ; and all persons wandering abroad and lodging in taverns, beer-houses, out-houses, market-places, or barns, or in the open air, and not giving a good account of themselves, and all persons wandering abroad and begging, and all idle persons not having visible means of livelihood, and all common prostitutes, shall be deemed and adjudged disorderly persons ; and it shall and may be lawful for any justice of the peace to commit such disorderly persons (being thereof convicted before him, by his own view, or by the confession of such offenders, respectively, or by the oath of one or more credible witness or witnesses) to the bridewell or house of correction, of such city or town, there to be kept at hard labour, for any time not exceeding sixty days, or until the next general sessions of the peace to be holden in and for the city or county in which such offence shall happen.

II. *And whereas* doubts have arisen and hereafter may arise, where authority is given to any justice or justices of the peace

to commit offenders to the bridewell or house of correction for offences cognizable before them out of the general sessions of the peace, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly directed, limited or appointed; Therefore, *Be it further enacted by the authority aforesaid*, That where any offenders shall be committed as aforesaid by virtue of any law now in being, or hereafter to be made, other than in case of petit larceny, and the time and manner of their punishment is not expressly limited, directed and appointed, the said justice or justices shall commit such offender to the bridewell or house of correction, there to be kept to hard labour until the next general sessions of the peace, or until discharged by a due course of law; and it shall and may be lawful for two justices (of whom the justice who committed such offender to be one) to discharge such offender before the said general sessions of the peace, if they shall see cause; and if he or she shall not be so discharged, the said general sessions of the peace may either discharge him or her, or continue him or her in custody for such time as they shall see fit, not exceeding six months.

Offenders, unless the punishment be otherwise limited, to be committed until the next sessions of the peace.

May be discharged by two justices,

And sessions may discharge or continue them for six months.

III. *And be it further enacted by the authority aforesaid*, That where any offender against this act shall be committed, as aforesaid, to the bridewell or house of correction, there to remain until the next general sessions of the peace; and the justices at such sessions shall, on examination of the circumstances of the case, adjudge such person to be a disorderly person within the intent and meaning of this act, they may, if they think convenient, order such disorderly person to be detained and kept in the said bridewell or house of correction to hard labour, for any further time not exceeding six months; and during the time of such confinement, to be corrected by whipping, in such manner and at such times and places, as, according to the nature of such person's offence, they in their discretion shall think fit.

Sessions may adjudge them disorderly and detain them for six months at hard labor, and order them to be corrected.

IV. *And be it further enacted by the authority aforesaid*, That where any person offending against this act shall have been committed, as aforesaid, to the bridewell or house of correction, there to remain until the next general sessions of the peace, if upon the examination of the person so committed as aforesaid, the last legal place of settlement of such person cannot be found, the justices shall, at the said general sessions, order such persons to be detained and employed in the bridewell, or house of correction, until they can provide for themselves, or until the justices of the peace at their next general sessions of the peace, can place them out in some lawful calling, as servants, apprentices, mariners, or otherwise; which the said general sessions of the peace are hereby empowered to do, in such manner as they shall think fit.

Sessions may place them out as servants, &c.

V. *And be it further enacted by the authority aforesaid*, That the several gaols in the respective cities and counties in this state, in which no bridewell, or house of correction, is or shall be built, shall be used and considered as houses of correction for all or any of the purposes in and by this act directed, with respect to houses of correction and the government thereof, until there shall be such house or houses of correction built as aforesaid; and

Where gaols to be used as houses of correction.

the keepers of the respective gaols, for the time being, or such persons as they respectively shall appoint, shall be masters or keepers of such gaols as houses of correction, as aforesaid, and shall have the same authority, and be under the same regulations, as in this act are before given and provided, respecting houses of correction; and all and every person and persons ordered to be sent to a house of correction, according to this act, shall be sent to and received in such gaols respectively, and there be kept, taken care of and governed, according to the directions of this act, until such house or houses of correction shall be provided as aforesaid.

Two justices may order lunatics, or mad persons, to be confined.

13 Ann. st. 2. c. 23. § 23.
17 Geo. 2. c. 5. § 30.

This act not to restrain the power of the chancellor, nor prevent friends from taking care of them.

Disorderly persons to pay the expence of conveying them to the place where they belong.

VI. *And whereas* there are sometimes persons, who by lunacy or otherwise, are furiously mad, or are so far disordered in their senses that they may be dangerous to be permitted to go abroad; Therefore, *Be it further enacted by the authority aforesaid*, That it shall and may be lawful for any two or more justices of the peace, where such lunatic or mad person shall be found, by warrant under their hands and seals, directed to the constables and overseers of the poor of the city or town, or some of them, to cause such person to be apprehended and kept safely locked up in some secure place within such city, or within the county in which such town shall lie, as such justices shall, under their hands and seals, direct and appoint; and if such justices shall find it necessary, to be there chained, if the last legal place of settlement shall be in such city, or in any town within such county; and if the last legal place of settlement of such person shall not be in such city or county, then such person shall be sent to the place of his or her last settlement, in the manner directed in and by the laws relating to the poor, and shall be locked up or chained, by warrant from two justices of the city or county to which such person shall be so sent in manner aforesaid; and the reasonable charges of apprehending, maintaining, keeping and removing such person, shall be satisfied and paid by the overseers of the poor of the city or town in which such person shall be legally settled as aforesaid, in the manner in and by the said laws directed: *Provided always*, That this act, or any thing therein contained, shall not extend, or be construed to extend to restrain or abridge the power or authority of the chancellor of this state for the time being, touching or concerning such lunatics; or to restrain or prevent any friend or relation of such lunatic, from taking them under their own care and protection.

VII. *And whereas* it often happens that disorderly persons wander from the places of their legal settlement, and are in circumstances sufficient to pay for their passage or journey home; Therefore, *Be it further enacted by the authority aforesaid*, That it shall be lawful for any justice or justices of the peace, before whom any such disorderly person shall be brought, to order such disorderly person to be searched, and his or her bundle to be inspected by a constable, or overseer of the poor of such city or town, in the presence of such justice; and if it shall appear that any such disorderly person hath sufficient wherewithal to pay his or her passage or journey, either in the whole or in part, to the city or town to which he or she shall belong, then the said justice

or justices shall order so much of the money so found, to be paid, or other effects found with and upon such disorderly person, to be sold, and employed for and towards the expense of taking up and passing such disorderly person to his or her last legal place of settlement; returning the overplus (if any there be) after deducting the charges of such sale, to such disorderly person.

CHAP. XXXII.

An ACT concerning Amendments and Jeofails.

Passed 20th February, 1788.

[V.S. v. 2. 767.—J.&V. v. 2. 224.—Gr. v. 2. 54.—K.&R. v. 1. 137.]

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That by the misprision of a clerk, in any place wheresoever it be, no record or process shall be annulled or discontinued by mistaking in writing one syllable or one letter too much or too little: But as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be immediately amended in due form, without giving advantage to the party that challengeth the same, because of such misprision. And the justices or judges before whom such plea or record is made, or shall be depending, as well by adjournment as by way of error, or otherwise, shall have power and authority to amend such record and process, as well after judgment as before judgment given, in any such plea, record or process, as long as the same record and process is before them. *And further,* That the judges and justices of the courts and places, in which any record, process, declaration, count, plea, warrant of attorney, writ, panel or return, is or may be while the same remains before them, shall have power to examine such records, declarations, counts, pleas, warrants of attorney, writs, panels and returns, by them and their clerks, and to reform and amend (in affirmance of the judgments of such records and process) all that which to them, in their discretion, shall seem to be misprision of the clerks, in such record, process, declaration, count, plea, warrant of attorney, writ, panel or return, so that by such misprision of the clerk, no judgment shall be reversed nor annulled. And if any record, process, declaration, count, plea, warrant of attorney, writ, panel or return, be certified defective, otherwise than according to the writing which thereof remaineth in the offices, court or places, from whence they be certified, the parties, in affirmance of the judgments of such records and process, shall have advantage to allege that the same writing is variant from the said certificate, and that being found and certified, the same variance shall be, by the said judges or justices, reformed and amended according to the first writing. *And moreover,* That the judges and justices, before whom any misprision or default is or shall be found, in any record or process which now is, or hereafter shall be depending before them, or any of them, as well by way of error as otherwise, or in the returns of the same, made or to be made by sheriffs, coroners, or any other, by misprision of the clerks of any

Mistakes in pleas, records or process, how & when to be amended

33 H. 3. c. 11
14 Ed. 3. st. 1. c. 6.
11 H. 4. c. 3
9 H. 5. st. 1. c. 4

As well after judgment as before.

8 H. 6. c. 12.
42. etc. 15
4 H. 6. c. 3.

Courts may order misprisions of clerks to be amended

8 H. 6. c. 15.
5 Geo. 1. c. 13
8 H. 6. c. 12.
36 Ed. 3. st. 1. c. 15
32. H. 8. c. 30.

Variance between a record and the certificate thereof to be amended

18 El. c. 14.
31 Jac. 1. c. 13
27 El. c. 8
4 Ann. c. 16.
§. 24

Courts may order misprisions of clerks, sheriffs and other officers to be amended
16 Geo. 17 Car. 2. c. 8.
4 Geo. 2. c. 30
6 Geo. 2. c. 14

of the said courts, or by misprision of the sheriffs, under sheriffs, coroners, or their clerks or other officers, clerks, or other ministers whatsoever, in writing one letter or one syllable too much or too little, shall have power to amend such defaults and misprisions, according to their discretion; and by examination thereof, by the said judges and justices, to be taken where they shall think needful: *And also*, that all such amendments may be made as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

Judgment not to be reversed for rasures or interlineations, &c.

II. *And be it further enacted by the authority aforesaid*, That for error assigned, or to be assigned, in any record, process, warrant of attorney, writ original or judicial, panel or return, for that in any places of the same there be rasures, or interlineations, or that there be any addition, subtraction or diminution of words, letters or titles, or parcel of letters found in any such record, process, warrant of attorney, writ, panel or return, no judgment or record shall be reversed or annulled.

Clerks not to alter records in any term after judgment

III. *And be it further enacted by the authority aforesaid*, That the record and process of pleas, real and personal, and of assises and certifications, whereof judgment is given and inrolled, or things touching such plea, shall in no wise be amended nor impaired by new entering of the clerks, either by the record or things certified, in no term after that such judgment in such plea is given and inrolled.

Proceedings to be in English
4 Geo. 2. c. 26

IV. *And be it further enacted by the authority aforesaid*, That all pleas which shall be pleaded in courts whatsoever in this state, shall be pleaded, shewed, defended, answered, debated, judged, entered and inrolled in the English tongue; and that all writs, process and returns thereof, and all proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, and all patents, charters, pardons, commissions, records, judgments, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all proceedings whatsoever, in any courts of justice in this state, shall be in the English tongue and language only, and shall be written or printed in a good strong legible hand and character, and in words at length, and not abbreviated, except such abbreviations as are now commonly used in the English language. But it shall and may be lawful to express numbers by figures, in like manner as hath been heretofore, or is now commonly used in the said courts respectively, and to express the proper and known names of writs or other process or technical words in the same language as hath been commonly used, so as the same be written or printed in a common legible hand or character.

Except names of writs and technical words
6 Geo. 2. c. 14
§ 5

No person to be prejudiced by ancient terms and terms

V. *And be it further enacted by the authority aforesaid*, That no person shall be prejudiced by the ancient terms and forms of pleadings, so that the matter of the action be fully shewed in the writ, declaration and pleadings.

After verdict judgment not to be reversed for any mispleading, insufficient pleading or fault, &c.

VI. *And be it further enacted by the authority aforesaid*, That if any issue hath been or hereafter shall be tried, by the oath of twelve men or more, for the party plaintiff or defendant, or for the party tenant or defendant, bailiff in assise, vouchee, prayee-in-aid, or tenant by receipt, in any manner of action, suit, bill,

plaint or demand, in any court of record, then the judges or justices by whom judgment thereof ought to be given, shall proceed and give judgment in the same, any mispleading, lack of colour, insufficient pleading, or jeofail; any miscontinuance or discontinuance, or misconceiving of process, misjoining of the issue, lack of warrant of attorney of the party against whom the issue shall happen to be tried, or any other default or negligence of any of the parties, or of their counsellors or attorneys, had or made to the contrary, notwithstanding. And the judgments thereof so to be had and given, shall stand in full strength and force, to all intents and purposes, according to the said verdict, without any reversal or undoing of the same by writ of error, or otherwise, in like form as though no such default or negligence had ever been had or committed. *And further*, That if any verdict of twelve men or more, hath been or shall be given in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon shall not be stayed or reversed, by reason of any default in form, or lack of form, touching variance from the register or other defaults in form, in any writ original or judicial, count, declaration, plaint, bill, suit or demand, or for want of any writ, original or judicial, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process upon or after any aid-prayer, or voucher; nor shall any such record or judgment, after verdict, be reversed for any of the defects or causes aforesaid. *And moreover*, That if any verdict, of twelve men, or more, hath been or hereafter shall be given for the plaintiff or demandant, or for the defendant or tenant, bailiff in assise, vouchee, prayee-in-aid, or tenant by receipt, in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon shall not be stayed or reversed, by reason of any variance in form only, between the original writ or bill, and the declaration, plaint or demand; or for lack of any averment of any life or lives of any person or persons, so as, upon examination, the said person be proved to be in life; or by reason that the *venire facias*, *habeas corpora*, or *distringas*, is awarded to a wrong officer, upon any insufficient suggestion, or by reason that any of the jury which tried the said issue, is misnamed, either in the christian name, surname, or addition, in any of the said writs, or in any return upon any of the said writs, so as, upon examination, it be proved to be the same man who was meant to be returned; or by reason that there is no return upon any of the said writs, so as a panel of the names of the jurors, be returned and annexed to the said writ or writs; or for that the sheriff's name, or other officer's name having the return thereof, is not set to the return of any such writ, so as, upon examination, it be proved, that the said writ was returned by the sheriff or under sheriff, or any such other officer; or by reason that the plaintiff in any action of ejectment, or in any personal action or suit (being an infant under the age of twenty-one years) did appear by attorney therein, and the verdict pass for him or her; and also, that if any verdict of twelve men or more, hath been or shall be given in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon

1 John. ca. 20
31 230.
3 John. Rep.
183.

32 H. 8 c. 30
18 El. c. 14

21 Jac. 1 c. 18
16 & 17 Car.
2 c. 8

Or for want of
form.

Execution lost
new one ordered
to be filed.
3 John.
Rep. 448.

No attorney
named in the
record, but a
blank left.

3 John. Rep.
526

Or for variance in form,
or want of
averments, insufficient
suggestions, mis-
naming of
jurors, &c.

Coleman's ca-
ses, 41 61

2 John. 184.

on shall not be stayed or reversed for default in form or lack of form, or by reason that there are no pledges, or but one pledge to prosecute; returned upon the original writ; or because the name of the sheriff is not returned upon such original writ, or for default of entering pledges upon any bill or declaration; or for default of alleging the bringing into court any bond, bill, indenture or other deed whatsoever, mentioned in the declaration or other pleading; or for default of alleging the bringing into court letters testamentary, or letters of administration, or by reason of the omission of the words, *with force and arms*, or, *against the peace*, or for or by reason of the mistaking of the christian name or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month or year, by the clerk, in any bill, declaration or pleading, where the right name, surname, sum, day, month or year, in any writ, plaint, roll or record preceding, or in the same roll or record where the mistake is committed, is or are once truly and rightly alleged, and to which the party might have demurred and shewn the same for cause; nor for want of the averment or words, *and this he is ready to verify*, or, *and this he is ready to verify by the record*, or for not alleging, *as appears by the record*, or for that there is no right venue, so as the cause was tried by a jury of the proper county or place where the action is laid; nor shall any judgment after verdict, be reversed for want of entering, that the person against whom such judgment is given, *be in mercy*, or, *be taken*, or by reason that the words *be taken*, are entered for *be in mercy*, or the words *be in mercy*, are entered for *be taken*; nor for that in the judgment the words, *it is granted*, are entered for *it is considered*; nor for that the increase of costs after a verdict in any action, or upon a nonsuit in replevin, are not entered to be at the request of the party for whom the judgment is given; nor by reason that the costs in any judgment whatsoever, are not entered to be by the consent of the plaintiff; but that all such omissions, variances, defects, and all other matters of like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered, shall be amended by the justices, or other judges of the courts where such judgments are or shall be given, or whereunto the record is or shall be removed by writ of error.

2 John. Rep.
184

6 John. Rep.
95

7 John. Rep.
468

Execution am-
mendable.

8 John. Rep.
89 163

3 John. Rep.
144

9 John. Rep.
386

On demurrer,
court to give
judgment as
the right of
the cause shall
appear, with-
out regarding
want of form
not specially
shewn as
cause of de-
murrer.

v. s. v. 2 75
§ 1.

VII. *And be it further enacted by the authority aforesaid, That* where any demurrer hath been, or shall be joined and entered in any action or suit in any court of record in this state, the judges or justices shall proceed and give judgment, according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect or want of form, in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission or defect might have heretofore been taken to be matter of substance, so as sufficient matter appear in the pleadings, upon which the court may give judgment according to the very right of the cause; and therefore no advantage or exception shall be taken of or for

an immaterial traverse, or of or for the default of entering pledges upon any bill or declaration, or of or for the default of alleging the bringing into court any bond, bill, indenture, or other deed whatsoever, mentioned in the declaration or other pleading, or of or for the default of alleging the bringing into court letters testamentary, or letters of administration, or of or for the omission of the words, *with force and arms*, or, *against the peace*, or either of them; or of or for want of the averment or words, *and this he is ready to verify*, or, *and this he is ready to verify by the record*; or of or for not alleging, *as appears by the record*; but the court shall give judgment according to the very right of the cause as aforesaid, without regarding any such imperfections, omissions or defects, or any other matter of like nature, except the same shall be specially and particularly set down and shewn for cause of demurrer, and that no judgment shall be reversed by any writ of error for any such imperfection, omission, defect or want of form as is aforesaid, except such only as are before excepted. *And further*, That after demurrers joined, the court where the same are or shall be depending, shall and may, by virtue of this act, from time to time, amend all and every such imperfections, omissions, defects and want of form as are before mentioned, other than those only which the party demurring shall specially and particularly express and set down, together with his demurrer, as aforesaid.

VIII. *And be it further enacted by the authority aforesaid*, That every thing herein before contained, shall extend to all judgments which have been or shall be entered upon confession, *nihil dicit*, or *non sum informatus*, in any court of record; and no such judgment shall be reversed, nor any judgment upon any writ of enquiry of damages executed thereon, be stayed or reversed, for or by reason of any imperfection, omission, defect, matter or thing whatsoever, which would have been aided and cured by this act, in case a verdict of twelve men had been given in the said action or suit, so as there be an original writ or bill duly filed according to law.

IX. *And be it further enacted by the authority aforesaid*, That all writs of error, wherein there shall be any variance from the original record, or other defect, may and shall be amended, and made agreeable to such record, by the respective courts where such writ or writs of error are or shall be made returnable. And that where any verdict hath been or shall be given in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon shall not be stayed or reversed for any defect or fault, either in form or substance, in any bill, writ, original or judicial, or for any variance in such writs from the declaration or other proceedings.

X. *And be it further enacted by the authority aforesaid*, That this act shall extend to all suits in any court of record, for the recovery of any debt due to the people of this state, or for any debt, duty or revenue belonging to them; and also to all writs of mandamus and informations, in the nature of a *quo warranto*, and to the proceedings thereon.

What shall be adjudged form

3 John. Rep. 190

4 John. Rep. 309

3 Wils. 341

2 Bl. Rep. 648

Ld. Raym. 775

That a writ tested out of term is not amendable:

But with a wrong return

is, 5 John. 333

This act to extend to judgments on confession *nihil dicit*, or *non sum informatus*.

V. S. v. 2, 767, § 3

4 Ann. c. 16

Variance in writs of error from the original record, to be amended

Judgment after verdict not to be reversed for want of form in any bill or writ

16 & 17 Car. 2, c. 8

This act to extend to suits for debts due to the state, and mandamus, &c.

9 Ann. c. 20, § 7

4 Ann. c. 16, § 24

But not to extend to criminal proceedings, nor popular actions, nor out-lawsries
 [V8v2,770,§18
 Extended the benefit of the statute of jeofails to suits by the crown for Revenue.]

XI. *Provided always, and be it further enacted by the authority aforesaid*, That this act, or any thing therein contained, shall not extend to any writ, declaration or suit of appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason, or other matter, nor to any process upon any of them; nor to any writ, bill, action or information, upon any popular or penal statute: nor to any outlawry or any process thereupon, or in order thereunto.

CHAP. XXXIV.

An ACT for preventing any Inconveniences that may happen by Privilege.

Passed 20th February, 1783.

[J.&V. v. 2. 229.—Gr. v. 2. 59.—K.&R. v. 1. 133.]

When members, &c. of the legislature may be sued

180-13 W. 3, c. 3

Gen 2.c.24

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That from and after the passing of this act, any person or persons, shall and may commence and prosecute any action or suit in any court of record in this state, against any senator or member of assembly for the time being, or against their or any of their servants, or any other person entitled to the privilege of either house of the legislature, at any time from and immediately after the prorogation or adjournment of the legislature, until a new legislature shall meet, or the same be re-assembled; and from and immediately after any adjournment of both houses of the legislature for above the space of fourteen days, until both houses shall meet or re-assemble; and that the said respective courts of record shall and may, after such prorogation or adjournment as aforesaid, proceed to give judgment, or to make final orders, decrees and sentences, and award execution thereupon, as such court may now lawfully do against other persons, liable to be arrested and imprisoned; any law, usage or custom to the contrary thereof notwithstanding. *Provided always*, That no member of the legislature, or his servant or servants, shall be liable to arrest, on any civil process, while coming to, or returning from the place where the legislature shall sit, to the place of such member's residence, but such time of coming or returning, shall not exceed fourteen days.

Plaintiffs delayed by privilege, not to be barred by the statute of limitations

12 & 13 W. 3, c. 3, § 3

II. *And be it further enacted by the authority aforesaid*, That where any plaintiff or plaintiffs shall, by reason or occasion of any privilege of either house of the legislature, be stayed or prevented from prosecuting any suit by him, her or them commenced, such plaintiff or plaintiffs shall not be barred by any statute of limitation, or nonsuited, dismissed, nor his, her or their suit discontinued for want of prosecution of the suit, by him, her or them begun; but may, after the time aforesaid, be at liberty to proceed to judgment and execution thereupon, as aforesaid.

III. *And whereas*, it is just and reasonable, that persons employed in offices and places of public trust, should at all times be accountable for any misdemeanors therein, and the public justice

of the state requireth a vigorous prosecution of such offenders; Therefore, *Be it further enacted by the authority aforesaid*, That any action or suit shall and may be commenced, and prosecuted in any court of record in this state, against any officer or person intrusted or employed in the revenue of this state, or any part or branch thereof, or in any other office or place of public trust, for any forfeiture, misdemeanor or breach of trust, of, in or relating to such office or place of trust, or any penalty imposed by law to enforce the due execution thereof; and that no such action, suit, or any other process, proceeding, judgment or execution thereupon, although such officer or person shall be a member of the senate or assembly, shall be impeached, stayed or delayed, by or under colour or pretence of any privilege of either house of the legislature.

Officers in public trust sued for any misdemeanor, not entitled to privilege, altho' members of the legislature

2 & 3 Ann, 1. c. 18

CHAP. LXXI.

An ACT to prevent firing the Woods.

Passed 12th March, 1788.

[Y.S. v. 1. 372.—J.&V. v. 2. 353.—Gr. v. 2. 187.—K.&R. v. 1. 146.]

1. *BE it enacted by the people of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That if any person or persons shall set fire to the woods in any part of this state, he, she or they shall forfeit and pay the sum of ten pounds, to be recovered with costs of suit, in any court having cognizance thereof, by any person or persons who will sue and prosecute for the same; the one moiety of which forfeiture, when recovered, shall be paid to the overseers of the poor of the town or place where the offence shall have been committed, for the use of the poor thereof; and the other moiety to the person or persons who will sue and prosecute for the same to effect as aforesaid. And such offender or offenders shall moreover be liable to all such damages as any person or persons shall sustain by such firing the woods as aforesaid.

Penalty for firing woods:

How to be recovered and applied.

II. *Provided always, and be it further enacted by the authority aforesaid*, That nothing in this act contained shall be construed to hinder or prevent any person or persons from firing his, her or their own woods; but if he, she or they do suffer such fire to extend beyond his, her or their own woods, he, she or they shall be subject to the penalty and forfeiture aforesaid, besides being answerable for the damages.

Any person may set fire to his own woods, but liable if it extend further

III. *And be it further enacted by the authority aforesaid*, That when the woods in any town within this state shall be on fire, the justices of the peace, the supervisor, the commissioners of the highways, and the officers of the militia, (not under the rank of captain) residing in such town, shall and they are hereby severally authorised and required, to order such and so many of the inhabitants of such town liable to work on the highways, and who shall reside within the vicinity of the place where such fire shall be, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing

Officers authorised to order inhabitants to assist in quenching fire;

Penalty for neglect.

or stopping the progress of the same, and if any person so ordered to repair to, and assist in manner aforesaid, shall refuse or neglect to comply with such order, every person so disobeying such order, shall forfeit and pay the sum of four shillings, for every day he shall so neglect or refuse to obey, to be recovered in a summary way, with costs, before any justice of the peace resident in such town, and the oath of the person having given such order, shall be sufficient evidence whereon to convict any delinquent, and the forfeiture so recovered shall be applied as a reward to such person or persons as the officers aforesaid, or the major part of them, shall deem best entitled thereto, for superior exertions at the extinguishment, or in stopping the progress of such fire.

[FOURTH SECTION OBSOLETE.]

TWELFTH SESSION.

CHAP. XVIII.

An ACT relative to Mines.

Passed 6th February, 1789.

[J.&V. v. 2. 402.—Gr. v. 2. 126.—K.&R. v. 1. 151.]

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That every person who heretofore has, or hereafter shall make discovery of any mine or mines of gold or silver, within this state, and the executors, administrators or assigns of such person, shall be and hereby is and are exempted, acquitted, released and discharged of and from paying or yielding to the people of this state, as sovereign thereof, or to any commissioner, agent, collector or receiver, for their use, any part, share, portion or dividend whatsoever, of the ore, produce or profit of such mine or mines, for, during and until the full end and term of twenty-one years, to be computed from the time of giving notice of such discovery in the manner herein after directed.

Discoverers of gold and silver mines to have the benefit thereof for 21 years.

Notice to be given to the secretary previous to the working such mines.

To be registered.

II. And be it further enacted by the authority aforesaid, That every person discovering, or having discovered a mine or mines of gold or silver within this state, shall before he presumes to work the same, give notice thereof, by information in writing, to the secretary of this state, describing particularly therein, the nature and situation of the same, which notice shall be registered in a book, to be kept by the said secretary for that purpose, and the secretary shall be entitled thereupon to the sum of ten shillings, and no more, for his services in registering such notice.

After the expiration of such term, permission of the legislature to be required.

III. And be it further enacted by the authority aforesaid, That no person or persons shall, on any pretext whatsoever, presume to work or intermeddle with any mine or mines of gold or silver, within this state, after the expiration of the term during which he, she or they is or are privileged as above specified, until he, she or they shall have previously obtained permission of the legislature of this state for that purpose, on such conditions and limitations as the legislature shall deem proper and expedient.

IV. And in order to give every reasonable advantage to persons making discovery of such mines as aforesaid, *Be it further enacted by the authority aforesaid*, That in all treaties with the legislature for the working of such mines, the person or persons who made discovery of the same, or his, her or their executors, administrators or assigns, shall have the offer of being a party and privy thereto, and shall, in every treaty for working the same, have the preference of all other persons whomsoever.

In treating with them, discoverers to be preferred.

Provided always, That nothing herein contained shall be construed to give any person a right to dig or break up the soil or ground of any person or persons, bodies corporate or politic, or of the people of this state, or to work any mine in the same, unless the consent of the owner or owners of such soil or ground, is, for that purpose, previously obtained.

No ground to be dug or broken without the consent of the owner.

Provided also, That nothing in this act contained, shall in any wise affect any grants heretofore made by the legislature of this state to persons having discovered mines.

This act not to affect former grants.

V. *And be it further enacted by the authority aforesaid*, That all and every person and persons, being a citizen or citizens of any of the United States of America, who now are, or hereafter shall be the owner or owners of any mine or mines, within this state, wherein any ore now is or hereafter shall be discovered, open, found or wrought, of which, upon an average, two equal third parts, or more in value, are copper, tin, iron and lead, or any of those metals, shall and may hold and enjoy the same mine or mines, and ore, and continue in the possession thereof, and dig and work the said mine or mines, or ore, notwithstanding that such mine or mines, or ore, shall be pretended or claimed to belong to the people of this state, as the sovereign thereof; any law, usage or custom to the contrary notwithstanding.

What mines belong to the owner of the soil.

1 W. & M. c. 30 § 4

CHAP. XX.

An ACT for determining differences by Arbitration.

Passed 28th February, 1791.

[Gr. v. 2. 351.—K.&R. v. 1. 156.]

WHEREAS it hath been found by experience, that references made by rule of court, have contributed much to the ease of the parties in the determining their differences, because the parties thereby become obliged to submit to the award of the arbitrators, under the penalty of imprisonment for their contempt, in case they refuse submission: Now for promoting trade and rendering the awards of arbitrators the more effectual in all cases, for the final determination of controversies referred to them by merchants and traders, or others, concerning matters of account, or trade or other matters:

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That it shall and may be lawful for all merchants and traders and others, desiring to end any controversy,

Arbitration by rule of court & manner of proceeding

§. 8. & 10 W.
§. c. 15.

suit or quarrel, controversies, suits or quarrels, for which there is no other remedy but by personal action or suit in equity, by arbitration to agree, that their submission of their suit or controversy to the award or umpirage of any person or persons, should be made a rule of any court of record in this state, which the parties shall choose; and to insert such their agreement in their submission, or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons; which agreement being so made and inserted in their submission, or promise, or condition of their respective bonds, shall, or may, upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the same affidavit in court, be entered of record in the same court; and a rule shall thereupon be made by the said court, that the parties shall submit to, and finally be concluded by the arbitration, or umpirage, which shall be made concerning them, by the arbitrators or umpire, pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party refusing or neglecting to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court, on motion, shall issue process accordingly, which process shall not be stopped or delayed in its execution, by any order, rule, command, or process of any other court, either of law or equity, unless it shall be made appear on oath to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration or umpirage, was procured by corruption or other undue means.

Penalty for
disobedience.

Arbitration
procured by
undue means
to be void.

II. *And be it further enacted by the authority aforesaid, That any arbitration or umpirage, procured by corruption or undue means, shall be judged and esteemed void, and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice, be made in the court where the rule is made for submission, to such arbitration or umpirage, before the last day of the next term, after such arbitration or umpirage made and published to the parties.*

SEVENTEENTH SESSION.

CHAP. XIX.

An ACT concerning Pardons.

Passed 12th March, 1794.

[Gr. v. 3. 113.—K.&R. v. 1. 158.]

BE it enacted by the people of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the person administering the government of this state for the time being, in all

cases in which he is authorised by the constitution to grant pardons, to grant the same upon such conditions, and with such restrictions, and under such limitations, as he may think proper.

NINETEENTH SESSION.

CHAP. XXV.

An ACT to prevent intrusions on Lands within the jurisdiction of this state, under pretence of title from the state of Connecticut.

Passed 11th March, 1796.

[Gr. v. 3. 285.—K.&R. v. 1. 159.]

WHEREAS information has been received by this legislature, that certain persons under pretence of title derived from a quit claim grant from the state of Connecticut, for a considerable extent of territory within this state, do by various improper practices endeavor to draw into question the jurisdiction of this state over the said territory, excite opposition to the lawful authority thereof, and defame the titles of persons holding lands by grants under the great seal of this state, or under the great seal of the late colony of New-York; in order therefore, to counteract such practices, and to preserve the just rights of the citizens of this state,

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That if any person shall intrude or settle on any of the waste or ungranted lands of this state, under or by virtue of any title or claim derived from or under the state of Connecticut, take possession of or settle on any lands within the jurisdiction of this state, every such person shall be deemed as holding such lands by a foreign title against the right and sovereignty of the people of the state of New-York; and it shall be the duty of the person administering the government of this state for the time being, from time to time, to remove or cause to be removed by such means, and in such manner as he shall judge proper, all such persons so intruding, settling or taking possession of any lands within the jurisdiction of this state, and to cause all the buildings of such persons to be destroyed, and for that purpose, in his discretion, to order out any proportion of the militia from any part of this state; and every detachment so from time to time to be ordered out, shall receive the same pay and rations, and be subject to the same rules and regulations as is provided by law, when any proportion of the militia of this state is ordered out, in case of invasion or other emergency.

II. *And be it further enacted,* That every person who shall bargain, sell or convey, or by any ways or means, obtain, get, or procure any pretended right or title, or make or take any promise, grant or covenant to have any right or title of any person or persons, in or to any lands, tenements or hereditaments within this state, under the said pretended title from the state of Connecticut, shall be deemed guilty of a public offence and high

Any person settling on territory under the pretended title of Connecticut, deemed to hold by a foreign title against this state.

Governor directed to remove such persons.

Any person conveying or receiving such title, deemed guilty of a public offence and if a citizen, on conviction, disqualified to hold any office.

misdemeanor against the people of this state, and may be prosecuted for the same by indictment or information in any court of record within this state, and upon conviction be punished by fine and imprisonment, in the discretion of the court, and if a citizen of this state, shall moreover be disabled forever thereafter, from electing or being elected to any office, place or trust within this state.

The public officers in certain counties to report the names of such settlers.

III. *And be it further enacted*, That it shall and hereby is made the duty of and strictly enjoined on the justices of the peace, sheriffs and other officers of the government of this state, within the several counties of Otsego, Tioga and Ontario, immediately after the passing of this act, and from time to time thereafter, to make enquiry in the said counties respectively, in which they have jurisdiction, whether any person or persons have already settled, or shall hereafter settle or claim to hold lands within the said counties, under pretence of title derived from such quit claim or other grant from the said state of Connecticut, and to report the name and names of every person so settling or claiming, to the person administering the government of this state for the time being, to the end that they may be proceeded against according to law.

Any suit under such title to be defended by the Att'y. Gen. at the expense of the state.

IV. *And be it further enacted*, That in case any suit shall be instituted by any person whomsoever, claiming under any grant from the state of Connecticut, for the recovery of any lands within either of the said counties, the person administering the government of this state for the time being, upon notice thereof, shall direct the attorney-general of this state to defend every such suit, and the faith of this state is hereby pledged for defraying the expense of all the costs and charges of defending every such suit as aforesaid.

TWENTIETH SESSION.

CHAP. LII.

An ACT limiting the period of bringing Claims and Prosecutions against Forfeited Estates.

Passed 28th March, 1797.

[Gr. v. 3. 428.—K.&R. v. 1. 162.]

WHEREAS the title deeds and other documents relative to forfeited estates were generally carried away by the former proprietors, whose conduct caused their forfeiture, and the title of the state as resulting from such forfeitures is thereby peculiarly liable to be obscured or defeated: Therefore,

Limitation of claims against forfeited estates.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*; That no person or persons, bodies politic or corporate, who now have, or shall or may hereafter have any estate, right, title, claim or demand, in or to any lands, messuages, tenements or hereditaments supposed to have been forfeited to the people of this state, in consequence of the attainder or conviction of any person or persons for any act or crime done or committed during the late war, and which have been

3 Caines Rep. 197.
8 John. Rep. 104.
Dower not barred by this act.

heretofore granted or conveyed to any person or persons, bodies politic or corporate, by the commissioners of forfeitures, or other person or persons duly authorised for that purpose on the part of this state, shall, after the expiration of five years from and after the passing of this act, and where the estate, right, title, claim or demand shall hereafter accrue, then after the expiration of five years after the same shall so accrue, have, prosecute, sue or maintain any action or suit at law for the recovery thereof, against the right or title so granted or conveyed by the people of this state, as above said.

II. *And be it further enacted*, That if any person or persons, bodies politic or corporate, shall and do at any time after the said respective periods, of five years, sue or prosecute any suit or action at law, or make any title or claim of, in or to any of the said lands, tenements or hereditaments so as aforesaid granted by such commissioners of forfeitures, or other person or persons duly authorised for that purpose on the part of this state, that then and in such case, such person or persons, bodies politic or corporate, their heirs and successors, so suing or prosecuting such suit or action, shall from thenceforth be utterly barred forever of all and every such suit or action, estate, right, title or claim so thereafter to be sued, prosecuted or had of, in and to the same, against the right or title so granted or conveyed by the people of this state as aforesaid.

All persons suing afterwards, to be barred.

III. *Provided always, and be it further enacted*, That if any person or persons who is, are, or shall be entitled to sue or prosecute such suit or action, or who hath, have, or shall have such right or title, shall be within the age of twenty-one years, *feme covert*, or insane, that then such person or persons, his, her and their heirs and assigns, shall or may at any time within five years next after his, her or their coming to full age, or of sound mind, or discoverture, bring, sue and prosecute such suit or action, and at no time thereafter.

Proviso in favour of infants, *feme covert*, and persons insane.

TWENTY-FIRST SESSION.

CHAP. CIV.

An ACT regulating the future Meetings of the Legislature.

Passed 6th April, 1798.

[K.&R. v. 1. 164.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That in case the person administering the government of this state for the time being, shall not, on or after the first Monday of July, and before the last Tuesday in January, in any year, convene the legislature by proclamation, then the legislature shall meet on the said last Tuesday of January, without any summons or notification whatsoever, at such place as the Senate and Assembly, at their meeting next preceding the said last Tuesday of January, shall have adjourned to, and in case there shall have been no such adjournment, or the

Legislature when and where to meet.

Colonial charter of rights, &c. Oct. 26, 1683, required the legislature to be convened once at least in three years. and the charter &c. of 1791. Br.

Ed. 1. ~~Re-~~
quired a ses-
sion once ev-
ery year.

Senate and Assembly shall not have adjourned to a place certain, then they shall convene on the said last Tuesday of January then next, at the city of Albany.

[SECOND SECTION OBSOLETE.]

TWENTY-SECOND SESSION.

[FIRST MEETING.]

CHAP. I.

An ACT^X authorising the Arrest of Ships or Vessels, for Debts contracted by the Master, Owner or Consignee, for and on Account of such Ships or Vessels, in this State.

Passed August 10th, 1798.

[K.&R. v. 1. 166.]

Ships or ves-
sels owned by
non-residents
liable to all
debts con-
tracted by the
master, &c.

3 Caines Rep.
38.

Such debts a
lien upon such
vessels, and
how preferred.

Persons hav-
ing such
claims to the
amount of 100
dollars, how to
proceed for
relief.

Warrant to
issue to seize
such vessel.

Plaintiff, on
the warrant,
how to pro-
ceed.

Court may re-
fer to referees.

I. *BE it enacted by the People of the State of New-York repre-
sented in Senate and Assembly, That ships or vessels of all de-
scriptions, built, repaired or equipped in this state, and owned by
any person or persons not resident therein, shall be liable for all
debts contracted by the master or commander, owner or consignee
thereof, on account of any work done, or any supplies or materi-
als furnished by any mechanic, tradesman, or others, for, on ac-
count, or towards the building, repairing, fitting, furnishing or
equipping such ships or vessels; and that debts so contracted,
shall be a lien upon such ships or vessels, their tackle, apparel
and furniture; and shall have preference to any, and all other
debts, due and owing from the owner thereof, except mariner's
wages.*

II. *And be it further enacted, That any person or persons,
whose demands for materials furnished, or labour done, for any
such ship or vessel, amount to one hundred dollars, may apply to
the judge or justice of any court of record within this state, hav-
ing cognizance thereof, where such ship or vessel owned as afore-
said then actually is, or where such work shall have been done,
or supplies furnished; and on requisition of the said party or par-
ties, after he or they shall have made oath or affirmation to their
account, which shall be left with the said judge or justice, it shall
be lawful for the said judge or justice to issue his warrant, direct-
ed to the sheriff of the city or county, commanding him to attach,
seize, and safely keep such ship or vessel, her tackle, apparel and
furniture.*

III. *And be it further enacted, That upon the return of such
attachment, the plaintiffs may join in a declaration against the
said ship or vessel, setting forth briefly their demands, and alleg-
ing work to have been done, and the articles to have been fur-
nished at the request of the owner, master or consignee, as the
case really was, and averring demand and refusal of such owner,
master or consignee, to which declaration shall be annexed the
accounts of the respective plaintiffs; and it shall be lawful for the
court in which such action shall be brought after judgment by de-*

* Amended (0:4-49) so as to apply to those
- are resident within the State - But
the lien - 6c, indur, 2 12 day, 2' or
left port & c. And - corr. bond
given de: lien - is discharged -
And Justice Court cognizant.

fault, or issue joined, to refer the said demands or accounts to three indifferent persons, to be named by the said court ; and the same proceedings shall be had in regard to such reference, and such further proceedings as is provided by the second, third and fourth sections of the act, entitled "*An act for the amendment of the law, and the better advancement of justice*, passed the 27th February, 1788.* *1787 6/5*"

IV. *And be it further enacted*, That if the master, owner or consignee of such ship or vessel, shall, before final judgment is entered, appear before one of the judges or justices of the said court, and enter into bonds with such sureties, as in the opinion of the said judge or justice will be sufficient to answer and satisfy all the demands which shall then be actually exhibited against such ship or vessel, or discharge the same, and pay the costs of suit ; then the said ship or vessel shall be discharged from the attachment, and be permitted to proceed on her voyage.

Master or owner how to obtain a discharge of the vessel.

V. *And be it further enacted*, That the said lien shall cease immediately after such ship or vessel shall have left this state.

When the lien shall cease.

* The act here referred to was revised and re-enacted at the 36th session, under the same title.

CHAP. III.

An ACT to preserve and support the Jurisdiction of this State.

Passed August 10th, 1798.

[K.&R. v. 1. 167.]

WHEREAS evil minded persons under pretence of authority derived from other states, or from the general government of the United States, to serve process within the state or district of New-York, have excited disturbances among the peaceful citizens thereof: *And whereas*, much mischief is apprehended from such practices, by means that our citizens are called out of their proper jurisdiction to answer to such illegal processes, and may be much harrassed in defending the same : *And whereas* the entire jurisdiction of this state ought to be preserved and respected : Therefore,

I. *BE is enacted by the People of the state of New-York, represented in Senate and Assembly*, That any person not appointed under the authority of the United States, or this state to execute process within the state or district of New-York, nor being an inhabitant thereof, who shall presume to come within the same, under pretence of any authority whatever, to serve or execute any writ or process against any citizen of this state, or against the goods and chattels, lands or tenements of any citizen as aforesaid, shall be deemed and adjudged guilty of a high misdemeanor ; and being thereof duly convicted, shall be sentenced to imprisonment in the state prison of this state for the term of seven years, and be confined in the same to hard labor, or solitude, or both, at the discretion of the court before whom the conviction shall be had:

Persons executing process guilty of a high misdemeanor.

Provided, That nothing in this act shall extend to any person who shall serve a process to compel the attendance of any witness before either house of congress, or before any court of the United States.

All such process deemed void.

II. *And be it further enacted*, That all judgments and decrees passed or rendered in pursuance of such writ or process, or notice served, or to be served, by whatever name the same may be called, shall be deemed and adjudged null and void to all intents and purposes: And the better to bring to condign punishment any person who may offend in the premises,

Duty of Officers with respect to offenders
Reward for apprehending any offender.

III. *Be it further enacted*, That it shall be the duty of all sheriffs, constables and magistrates within this state, to cause to be apprehended all offenders against this act: And if any person, a citizen of this state, shall cause to be taken and apprehended any such offender, so that he may be brought to proper punishment, such person shall be entitled to receive five hundred dollars from the treasury of this state.

TWENTY-FOURTH SESSION.

CHAP. X.

An ACT concerning the Court for the Trial of Impeachments and the Correction of Errors.

Passed 20th February, 1801.

[J.&V. v. 1. 181.—Gr. v. 1. 149, 394.—K.&R. v. 1. 182.]

Organization of the said court.

Vide Constitution of this state 32d article.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the court for the trial of impeachments and the correction of errors, shall consist of the president of the senate, the senators, chancellor, and judges of the supreme court, or the major part of them, who shall and may hold such court, at any time during the sitting of the legislature, on such days, and at such places as they shall from time to time appoint.

Seal of said court.

II. *And be it further enacted*, That the seal already provided for that purpose, shall be the seal of the said court, and the description thereof deposited and recorded in the office of the secretary of this state, shall there remain as a public record thereof.

Clerk thereof.

II. *And be it further enacted*, That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall, as often as may be necessary, appoint a fit person to be the clerk of the said court, who shall hold his office during the pleasure of the said council. And all writs and process issuing out of the said court, shall run in the name of the people of this state, and be tested in the name of the president of the senate, and signed by the said clerk.

The process.

Proceedings on impeachment.

IV. *And be it further enacted*, That all impeachments shall be delivered to the president of the senate, who shall thereupon immediately cause the said court to be summoned, and the said court shall forthwith cause the person so impeached, to appear or be brought before them, to answer the charge exhibited against him; and upon the appearance of such person, he shall be entitled to

have a copy of the said impeachment, and a reasonable time to plead or answer the same. And when issue shall be joined upon such impeachment, the court shall appoint a time and place for the trial thereof; and at the time and place so appointed, and before they proceed upon the trial, the president of the senate shall administer to each of the members of the said court then present, and the clerk of the said court shall at the same time also administer to the president, an oath or affirmation, as the case may require, truly and impartially to try and determine the charge in question, according to evidence; and the said court shall then proceed to hear, try and determine the same; and may from time to time, if necessary, adjourn the said trial to any other time or place; and no member of the said court shall sit, or give his vote upon such trial, until he shall have taken the oath or affirmation aforesaid, before the president of the senate: *Provided always*, Proviso. That no judgment or sentence of conviction, shall be given against any person upon any impeachment, unless two third parts of the members of the said court then present, shall assent to such judgment or sentence; and if two third parts of the members then present, shall not assent to a judgment or sentence of conviction, then the person so impeached, shall be considered as acquitted from such impeachment; and no judgment or sentence of conviction, upon any such impeachment, shall extend further than to removal from office, and disqualification to hold or enjoy any place of honor, trust or profit under this state; but the party so convicted or acquitted, shall nevertheless be subject to indictment, trial, judgment and punishment, according to the laws of the land.

Judgment on conviction.

V. *And be it further enacted*, That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly: but that it shall always be necessary, that two third parts of the members present, shall consent to and agree in such impeachment.

Power of impeachment vested in the assembly.

VI. *And be it further enacted*, That when any officer shall be so impeached, he shall be, and hereby is, suspended from exercising his office until his acquittal; and if the president of the senate should at any time be so impeached, notice thereof shall be immediately given by the assembly to the senate, that another president may be appointed.

Officer impeached, suspended from office.

VII. *And be it further enacted*, That all errors happening in the court of chancery, the supreme court, or court of probates, shall be redressed and corrected by the said court for the trial of impeachments and the correction of errors; and that it shall and may be lawful, as well for the attorney-general, in behalf of the people of this state, as for any party against whom any judgment hath been or may hereafter be given in the same supreme court, or the representatives of such party, who may be thereby aggrieved, to sue forth out of the court of chancery, a writ of error to be directed to the judges of the supreme court, commanding them to cause the record of such judgment, and all things concerning the same, to be brought before the president of the senate, and the senators and chancellor; which writ of error, if issued

Proceedings on error from the supreme court.

6 John. Rep. 337.

31 EL. 1 c. 1 § 4

15 Ed. 3 st. 1 c. 1 & 4

ed during the sitting of the legislature, shall be made returnable at the place where the senate shall then sit, without delay, but if issued during the recess of the legislature, shall be made returnable at the next meeting of the senate, wheresoever the same shall be. And the party prosecuting such writ of error shall, without delay, cause a transcript of the said record to be made, and the said judges to whom such writ of error may be directed, or any one of them, shall within fifteen days after notice of the said writ of error, if the same be returnable without delay, or if otherwise, at the day of the return thereof, annex the said transcript to the said writ of error, and endorse a proper return upon the said writ, and return the same. And the said court for the trial of impeachments and the correction of errors, shall have full power, and hereby are authorised and required, to examine all such errors as shall be assigned or found in such record, or in any process or proceeding concerning the same, and to call upon the judges of the supreme court to assign the reasons of such judgment, and thereupon to reverse, or affirm the said judgment, and to give such other judgment therein as the law shall require. And shall then cause the said transcript of the record, with their judgment thereon, and all things touching the same, to be remitted into the supreme court, where such further proceedings shall be thereupon had, as well for execution as otherwise, as may be agreeable to law and justice.

6 John. Rep.
337.

8 John. Rep.
458

On appeals
from chancery
and court of
probates.

8 John. Rep.
566.

VIII. *And be it further enacted*, That all persons aggrieved by any sentence, judgment, decree or order of the court of chancery, or court of probates, may appeal from the same or any part thereof, to the said court for the trial of impeachments and the correction of errors; which court, if such appeal be from the court of chancery, shall require the chancellor to assign the reasons of such sentence, judgment, decree or order, and shall have full power to examine, hear and finally determine all such appeals from the said court of chancery, or court of probates, and all matters concerning the same, and to reverse, affirm or alter any such sentence, judgment, decree or order, and to make such other order or decree thereon, as equity and justice shall require; and thereupon to remit the same, with their judgment, decree and order in the premises, and all things concerning the same, into the court so appealed from, where such further proceedings shall be thereupon had, as well for execution as otherwise, as may be agreeable to equity and justice.

Time limited
for bringing
writs of error
and appeals.

10 & 11. W.3.
c. 14

Proceedings
how to be con-
tinued when a
quorum of the
court does not
meet.

IX. *And be it further enacted*, That all appeals from the said court of chancery, except those from final decrees, and all appeals from the said court of probates, shall be made within fifteen days after making the sentence, judgment, decree or order, appealed from, and all appeals from final decrees in the said court of chancery, and all writs of error upon judgments in the supreme court, shall be brought within five years, after making such decree or rendering such judgment, and not after.

X. *And be it further enacted*, That if at the return of any writ of error, or at the time of entering any such appeal in the said court for the trial of impeachments and the correction of errors, or at any other time, to which the same or the proceedings thereon

shall be adjourned or continued, there should not be a sufficient number of members present to proceed thereon, the said writ of error shall not be thereby abated, or the said appeal, or any of the said proceedings, be discontinued, but the members of the said court then present shall adjourn or continue the same to some further day.

XI. *And be it further enacted*, That all questions arising upon such writs of error and appeals, in the said court for the trial of impeachments and the correction of errors, shall be determined by a majority of the members present; and if such members be equally divided in opinion, the president of the senate shall have a casting voice in the decision, but shall not vote in any other case.

Questions on writs of error and appeals, how to be determined.

CHAP. XI.

An ACT concerning Apprentices and Servants.

Passed 20th February, 1801.

[V.S. v. 1. 43. v. 2. 275, 485, 526, 644.—J.&V. v. 2. 197, 311.—

K.&R. v. 1. 186.—Gr. v. 2. 26. 143. v. 3. 275.]

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That no person whatsoever shall cause any apprentice or journeyman to be bound by oath, bond or otherwise, that after his or her apprenticeship or term expired, such apprentice or journeyman shall not set up or occupy any shop, house or cellar, and therein use his profession, trade or employment; nor by any means exact or take of any such apprentice or any journeyman, nor of any other person setting up, occupying or using for him or them, after his or their apprenticeship or term expired, any money or other thing, for using the same, upon pain to forfeit for every offence one hundred dollars; the one half thereof to the people of this state, and the other half to any person who will sue for the same, to be recovered with costs of suit, by action of debt, or by information, in any court of record having cognizance thereof, and every bond or other security given contrary to this act shall be void.

No apprentice or journeyman to be laid under certain restrictions:

20 H. 8. c. 5.
6 Geo. 3. c. 25

Under a penalty.

II. *And be it further enacted*, That every person, bound by indenture of his or her own free will, and with the consent of his or her father, or if he be dead, of the mother or guardian; and to be expressed in such indenture, and signified by such parent or guardian, sealing and signing the same indenture, and not otherwise, or by the justices and overseers of the poor, as is herein after directed, to serve as clerk, apprentice or servant, in any profession, trade or employment, until the age of twenty one years, or for any shorter time, although such clerk, apprentice or servant, shall be within the age of twenty one years at the making of such indenture, shall be bounden to serve for the term in the indenture specified, as fully as if the same clerk, apprentice or servant, was of full age at the making of the same. *Provided always*, That any child of any Indian woman shall not be so bound except in the presence and with the consent of a justice of the peace; a certificate

Persons how bound by indenture.

8 John. Rep. 328 and the cases there cited.

V.S. v. 2. 485
5 El. c. 4. §. 36
17 Geo. 2. c. 5
6 Geo. 3. c. 26

Provide.

of such consent being also signed by the justice, and filed with the clerk of the town in which such indenture shall be executed.

Further pro-
vide.

And provided further, That it shall be lawful for any male infant, under the age of twenty-one years, or any female infant, under the age of eighteen years, and who shall have no parent living, nor any guardian, by and with the approbation of the overseers of the poor of the town, or of any two justices of the peace, or of any judge of the court of common pleas of the county where such infant shall reside, to bind himself or herself an apprentice as aforesaid, until such infant, if a male, shall arrive to the age of twenty-one years, and if a female, to the age of eighteen years; which approbation shall be indorsed on the indenture, and every such indenture shall be valid and binding.

Mother's con-
sent when
sufficient.

III. *And be it further enacted,* That when the father of any child is not in legal capacity to give the consent aforesaid, the mother of such child shall have the same power to give such consent as if the father was dead; and whenever it shall be proved to the satisfaction of the overseers of the poor of any of the towns, or of a judge of the court of common pleas of the counties, of Suffolk and Queens, that the husband of any Indian woman residing therein, has left her with her children, it shall then be lawful for such woman to bind her children as aforesaid, in the same manner as if her husband was dead.

Poor children
how to be
bound :

43 El. c. 2. § 5
7 Jac. 1. c. 3
21. Jac. 1. c. 28
17 Geo. 2. c. 5.
§ 24.

IV. *And be it further enacted,* That it shall be lawful for the overseers of the poor of any city or town within this state, by and with the consent of the justices of the peace of the same county, or any two of them, residing in or near such town, or in the cities of New-York, Albany and Hudson, by and with the consent of the mayor, recorder and aldermen, or any two of them, or in the city of Schenectady, by and with the consent of the mayor and aldermen, or any two of them, to bind out any child who is or shall be chargeable, or whose parents are or shall become chargeable, to the city or town wherein they respectively inhabit, or who shall beg for alms, to be apprentices or servants according to their degree and ability, where they shall see convenient, until such child or children, if male, shall respectively arrive or come to the age of twenty-one years, and if female, to the age of eighteen years; and that the indentures or articles of agreement for binding any such infant, shall be as effectual, to all intents and purposes, as if such infant were of full age, and by indenture of covenant bound him or herself: And the counterpart of such indenture or articles for the benefit of the person so bound, shall be deposited with the clerk of the city or town in which such binding shall take place, for safe keeping.

Covenants in
their inden-
tures :

Full referen-
ces supra.

V. *And be it further enacted,* That in all indentures and contracts to be made by any overseers of the poor of any city or town, by and with the consent of the justices of the peace of the county, or any two of them, or by and with the consent of the mayor, recorder, and aldermen, or any two of them, in any city, for binding or putting out any child as an apprentice or servant, shall, among the covenants in such indentures or contracts to be made and agreed upon between the parties, always be inserted a clause to the following effect; that every master or

mistress to whom such child shall be bound as aforesaid, shall cause such child to be taught and instructed to read and write, and shall also give unto such child a new bible at the expiration of his or her term of service. *And further*, That the overseers of the poor of each respective city and town, shall be the guardians of every such child so put and bound out as aforesaid, to take care that the terms of the indentures or contract, and the agreements therein contained, be fulfilled, and that such child be not ill used; and the said overseers of the poor are hereby directed to inquire into the same, and to redress any grievance in such manner as is prescribed by law.

Overseers of the poor made their guardian.

VI. *And be it further enacted*, That if any person who shall be bound as aforesaid, shall refuse to serve as an apprentice or servant, according to the terms of the indenture made as aforesaid, then, upon complaint of the master or mistress, to whom such apprentice or servant shall be so bound, to any justice of the peace of the county wherein the said refusal shall be made, or to the mayor or recorder, or any one of the aldermen of any city, if any such refusal shall be in such city, they and each of them shall have full power and authority by this act, by warrant under hand and seal, or otherwise to send for the same person so refusing, and if the said person refuse to serve as an apprentice or servant, to commit him or her unto ward in the bridewell or house of correction, if any there be, or if there be no bridewell or house of correction, in the gaol of the city or county wherein such refusal shall take place, there to remain until he or she be contented, and will serve as an apprentice or servant, according to the intent and meaning of this act. And to the end, that the time of the continuance of the service of such apprentice or servant, may the more plainly and certainly appear, the age of every such infant so to be bound apprentice or servant, shall be inserted in his or her indentures; and where the binding is by the overseers of the poor, by and with the consent of two justices of the peace, or mayor, recorder and aldermen as aforesaid, the same justices of the peace, or mayor, recorder and aldermen, shall as fully as they can, inform themselves of such infant's age, and from such information shall insert the same in the said indentures; and the age of such infant, so inserted in the said indentures (in relation to the continuance of his or her service) shall be taken to be his or her true age, without any further proof thereof.

Persons bound as aforesaid, and refusing to serve, how to be dealt with

Vide references supra.

Age of every infant so bound, to be inserted in the indenture

2 & 3 Ann, c. 6

VII. *And be it further enacted*, That every sum of money which shall be paid or agreed for, with or in relation to every clerk or apprentice so to be bound out as aforesaid, to learn any profession, trade or employment, shall be inserted in the indentures to be executed as aforesaid; and every indenture or contract for taking of any clerk or apprentice, other than is by this act regulated, shall be void as against such clerk or apprentice only: *Provided always*, That no deed or contract for binding any person as clerk, apprentice or servant as aforesaid, shall be void for not being indented only.

Money paid or agreed on, in relation to every clerk or apprentice, to be inserted in the indenture.

8 Ann, c. 9, § 35

Proviso 31 Geo. 3, c. 11.

VIII. *And be it further enacted*, That every contract already made, or hereafter to be made, by any infant or other person

Contracts of service, by infants or other

persons coming from beyond sea.

4 Geo. I. c. 11, § 5.

Proviso.

Grievances of the master or apprentice how to be redressed at the sessions.

5 El. c. 4, § 35.
2 & 3 Ann, c. 6, § 12.
20 Geo. v. c. 19, § 32.

coming from beyond sea, executed in the presence of two witnesses, and acknowledged by the servant, before any mayor, recorder, alderman or justice of the peace, shall bind the party entering into the same, for such term and for such services as shall be therein specified; and that every assignment of the same, executed before two credible subscribing witnesses, shall be effectual to transfer the same contract for the residue of the term therein mentioned: But that no contract shall bind any infant longer than until his or her arrival to the full age of twenty-one years; excepting such as are or shall be bound in order to raise money for the payment of their passages, who may be bound until the age of twenty-four years: *Provided*, The term of such service shall not exceed four years in the whole.

IX. *And be it further enacted*, That if any master or mistress shall be guilty of any misuseage, refusal of necessary provisions or clothing, cruelty, or other ill treatment, so that his or her said clerk, apprentice or servant, shall have any just cause to complain, or the said clerk, apprentice or servant be guilty of any misdemeanor, miscarriage or ill behaviour, or do not perform his or her duty to his or her master or mistress, then the said master or mistress, or the said clerk, apprentice or servant being aggrieved, and having just cause of complaint, shall repair to any justice of the peace within the county, or to the mayor or recorder, or any one of the aldermen of the city, where the said master or mistress dwelleth, who shall take such order and direction between the said master or mistress, and his or her clerk, apprentice or servant, as the equity of the case shall require. And if the said justice of the peace, or mayor, recorder or alderman, cannot compound or agree the matter between such master or mistress and his or her clerk, apprentice or servant, then the said justice, or the said mayor, or recorder or aldermen, shall take a recognizance of the said master or mistress, in such sum as he shall think proper, to appear at the next general sessions of the peace, to be holden in the said city or county, and upon his or her appearance and hearing of the matter before the said court of general sessions of the peace, the said court may, in their discretion, by rule or order, discharge the said clerk, apprentice or servant of his or her clerkship, apprenticeship or service, and order all such part of such sum and sums of money as shall have been paid or agreed for, with or in relation to every such clerk, apprentice or servant, as they shall judge proper, to be refunded to the person who paid the same, his or her executors or administrators: And that such order so entered in the minutes of the said court, shall be a sufficient discharge for the said clerk, apprentice or servant from his or her indenture: And if the default shall be found to be in the clerk, apprentice or servant, then the said justices shall cause such punishment, by fine or imprisonment, or both, as for a misdemeanor, to be inflicted upon him or her, as by them shall be thought meet.

Apprentices and servants, in certain cases, discharged by three justices, on being aggrieved.

X. *And be it further enacted*, That it shall be lawful for any three or more justices in any county, or for the mayor, recorder, and aldermen of any city, or any three or more of them, upon any complaint or application, by any apprentice or servant, upon

whose binding out no sum of money was paid, touching or concerning any misusage, refusal of necessary provisions or clothing, cruelty or other ill treatment, of or toward such apprentice or servant, by his or her master or mistress, by precept under their hands and seals, to summon such master or mistress to appear before such justices, or such mayor, recorder and aldermen, or any two or more of them, at a reasonable time and place to be named in such summons; and such justices, mayor, recorder and aldermen, shall and may examine into the matter of such complaint; and upon proof thereof, made upon oath, to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved) the said justices, or mayor, recorder and aldermen, may discharge such apprentice or servant, by warrant or certificate under their hands and seals; for which warrant or certificate no fees shall be paid.

XI. *And be it further enacted*, That it shall be lawful for such justices, or mayor, recorder and aldermen, or any two or more of them, upon application or complaint made upon oath, by any master or mistress, against any such apprentice or servant, touching or concerning any misdemeanor, miscarriage or ill behaviour in his or her service, to hear, examine and determine the same, and to punish the offender by commitment to the house of correction, (if any there be) or to the common gaol of the county or city, there to remain at hard labor for a reasonable time, not exceeding one calendar month, or otherwise, by discharging such apprentice or servant, in manner and form before mentioned.

XII. *And be it further enacted*, That if any apprentice or servant shall absent himself from the service of his master or mistress, before the term of his apprenticeship or service shall be expired, every such apprentice or servant, shall, at any time thereafter, wherever he shall be found, be compelled to serve his said master or mistress for double the time he shall have so absented himself from such service, unless he shall make satisfaction to his master or mistress for the loss he shall have sustained by such absence from his service: And so from time to time, as often as any such apprentice or servant shall, without leave of his master or mistress, absent himself from his service, before the term of his contract shall be fulfilled. *Provided always*, That nothing in the present section of this act, shall extend to an apprentice, whose master or mistress shall have received with such apprentice any sum or sums of money to learn such profession, trade or employment. *And also*, That no apprentice or servant shall be compelled to serve for any time or term, or to make any satisfaction to any master or mistress, after the expiration of three years next after the end of the term for which such apprentice or servant shall have contracted to serve.

XIII. *And be it further enacted*, That if any person shall think himself aggrieved by such determination, order or warrant of such justice or justices, mayor or recorder and aldermen as aforesaid, (except an order of commitment) such person may appeal to the next general sessions of the peace, to be holden in and for the city or county where such determination or order shall be made, such person giving six days notice of his intention of bringing such

20 Geo. 2.c.19

And punished for misconduct.

Vide references supra.

Apprentices and servants absenting themselves, to serve double time.

5 El. c. 4.

Proviso:

Further proviso.

Appeals to the sessions from order of justices.

Vide supra.

appeal, and of the cause, and matter thereof, to such justice or justices of the peace, mayor, recorder or aldermen, and the parties concerned, and entering into a recognizance within three days after such notice, before some justice of the peace, or the mayor, or recorder, or one of the aldermen for such city or county, with sufficient surety, conditioned to try such appeal at, and abide the order and judgment of, and pay such costs as shall be awarded by the justices, at such general sessions; which said justices at their said session, upon due proof upon oath of such notice being given, and of entering into such recognizances as aforesaid, shall and are hereby directed to proceed in, and hear, and finally determine the causes and matters of all such appeals, and to give and award such costs, to any of the respective parties, as they in their discretion shall judge proper and reasonable, not exceeding ten dollars: the same to be levied by distress and sale of the goods and chattels of such person against whom such determination shall be made, and that their judgments and orders therein shall be final and conclusive to all parties concerned.

Executors,
certain cases
to bind chil-
dren.

XIV. *Provided nevertheless, and be it further enacted*, That the executor or executors, who are or shall be by the last will and testament of a father directed to bring up his child or children to some trade or calling, such executor or executors are hereby empowered, to bind such child or children by indenture, in like manner as the father might by law have done, if living, any thing in this act to the contrary in any wise notwithstanding.

CHAP. XIII.

An ACT to prevent Abuses in suing out Writs of Habeas Corpus and Certiorari.

Passed 24th February, 1801.

[V.S. v. 1. 79. 225.—J.&V. v. 2. 135.—Gr. v. 1. 429.—K.&R. v. 1. 192.]

No *habeas corpus* or *certiorari* to issue till allowed by a judge;

1 & 2 Ph.
or M. c. 13.
§ 7

Nor in term time to remove indictments at the instance of defendant, without rule of court:
§ W.&M.c.11
When delivered to the court

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That no writ of *habeas corpus* or *certiorari*, shall issue out of any court, to remove any prisoner out of any gaol, or to remove any suit or action out of any mayor's court or court of common pleas, or any indictment, presentment, inquisition, judgment, order, record, recognizance or other proceeding, out of any other court, or from before any justice or justices of the peace, unless the same be allowed and signed by one of the justices of the court out of which the same shall issue: *And further*, That no *certiorari* at the instance of any party indicted for any misdemeanor, in any court of general sessions of the peace, shall issue during any term of the supreme court to remove such indictment before the trial thereof, unless the same be granted on motion made in open court, and by a rule of the said supreme court; and that every *certiorari*, directed to any court of general sessions of the peace, shall be delivered in open court.

Causes of 250
dolls. & under,
not re-

II. *And be it further enacted*, That no personal action depending in any mayor's court or court of common pleas, or any bond or

specialty, or for any other cause, where the sum mentioned in the condition of such bond or specialty, with the interest thereof, or the matter or thing in demand, shall not exceed the sum of two hundred and fifty dollars, shall, before judgment, be stayed or removed into the supreme court, by any such writ: *Provided however*, That this prohibition shall not extend to any action wherein the people of this state shall be interested, or in which title to lands or tenements shall in any wise come in question, nor to actions of replevin, assault and battery, false imprisonment or slander, nor to any action by or against the mayor, aldermen and commonalty, of either of the cities of New-York or Albany, or the mayor, recorder, aldermen and commonalty of the city of Hudson.

III. *And be it further enacted*, That no such writ shall be received by any mayor's court or court of common pleas, to remove any action depending in such court, unless the same be delivered before interlocutory or other judgment entered in such action; and in case of an issue to be tried by a jury, before one of the jury summoned to try the same shall be sworn; and if any action shall have been stayed, or removed into the supreme court, by any such writ, and remanded by *procedendo* or otherwise, no such writ shall again be received to stay or remove the same.

IV. *And be it further enacted*, That every person indicted for any misdemeanor in any court of general sessions of the peace, or against whom any judgment or order of such court, or of any justice or justices of the peace, other than judgments in actions for debts or demands between party and party, shall have been given or made by virtue of any law of this state, for the benefit of any other person, shall on prosecuting such *certiorari*, and before the allowance thereof, enter into recognizance with two sufficient sureties to the people of this state, before one of the justices of the supreme court, or before such court of general sessions of the peace, or any one of the justices thereof, in the sum of one hundred and twenty five dollars; conditioned, in the case of such indictment, that the person indicted and prosecuting such *certiorari*, shall at the return thereof, appear and plead to the same indictment in the supreme court, and at his or her proper costs and charges cause the issue which shall be joined thereon, or on any plea relating thereto, to be tried at the circuit court to be held in such county, next after such *certiorari*, shall be returnable; if it be not in the county where the supreme court shall sit, and if in such county, then at the next term of the said court, or at such other time as the said supreme court shall appoint, and shall give due notice of such trial to the prosecutor or his attorney, and to the attorney-general or district-attorney, as the case may require, and shall appear from day to day in the said supreme court, and not depart from the same without being discharged by the said court, and shall pay to the prosecutor the costs, if any, which shall be ordered by the supreme court in pursuance of this act; and conditioned, in the case of any such judgment or order, that such person shall at his or her proper costs and charges prosecute such *certiorari* to effect, without any wilful delay, and perform such judgment or order, as the said supreme court shall

movable by those writs

21 Jac. 1, c. 23
13 Geo. 1, c. 39, § 3.

Proviso.

8 John. Rep. 341

Recognizance on *certiorari*, when required and how taken.

43 El. c. 5

No such writ after *procedendo*.

21 Jac. 1, c. 23, § 3

Recognizance on *certiorari*, when required and how taken.

21 Jac. 1, c. 2, § 7.

In case of indictments.

5 W. & M. c. 11,
8 & 9, W. 3, c. 33.

In case of judgments and orders.

8 Geo. 2, c. 19, § 2.

Recognizance
how disposed
of.

When holden
for costs, or
the perform-
ance of the
judgment or
order.

Certiorari,
when not to
issue in the
case of ap-
prentices.

4 John. 292.

Habeas corpus
and *certiorari*,
when void.

make in the premises, and pay the party for whose benefit the judgment or order so removed was made, if the same shall be confirmed, such costs and charges as shall be directed by the said court. *And further*, That every such recognizance shall be delivered, together with the writ of *certiorari*, to the justice, justices, or court to whom the said writ shall be directed, and be certified, together with such writ, into the supreme court, and there filed, and in case of such indictment, the name of the prosecutor, if a civil officer, or the party grieved, shall be indorsed thereon; and if the person indicted, shall be convicted of the offence charged in such indictment, and the prosecutor be a civil officer, prosecuting on account of any matter relating to his office, or the party grieved, the supreme court shall give to such prosecutor, and also to any party in whose favor or for whose benefit any such judgment or order shall be confirmed, reasonable costs, to be taxed according to the course of the said court, and to be recovered by attachment against the person so convicted, or against whom such judgment or order shall be made, at any time after the expiration of ten days after demand and refusal to pay the same, proof of such refusal being first made; and no such recognizance shall be discharged until such costs be paid, nor in case of such judgment or order, until the same be performed.

V. *And be it further enacted*, That no writ of *certiorari*, or other process shall issue, to remove into the supreme court any proceedings had before any justice or justices of the peace, mayor, recorder or aldermen, or any of them, or before any court of general sessions of the peace, in pursuance of the act, entitled "*An act concerning apprentices and servants*, until after a final determination and judgment thereon by such court of general sessions of the peace.

VI. *And be it further enacted*, That if any writ of *habeas corpus*, *certiorari*, or other writ, shall issue in any of the cases above mentioned, contrary to, or without the party prosecuting such writ complying with the provisions contained in this act, the justice, justices or courts, to whom the same be directed, shall and may proceed as if the same had not been issued.

CHAP. XXIV.

An ACT prescribing the Times, Places and Manner of holding Elections, for Senators to represent this State, in the Senate of the Congress of the United States of America.

Passed 20th March, 1801.

[K. & R. v. 1. 199.]

Senators in
Congress, how
to be chosen.

Constitution
of the U.S. § 3.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the senators, to represent this state in the senate of the congress of the United States of America, shall be chosen in the same manner, that delegates to represent this state in the general congress of the United States of America, were directed to be appointed by the constitution of this state:

And whenever any senator shall be chosen as aforesaid, copies of the resolutions of the senate and assembly, testifying such choice, signed by the president of the senate and speaker of the assembly, shall be thereupon delivered to the person so chosen a senator, as evidence of such election. Evidence of their election.

II. *And be it further enacted*, That on the first Tuesday of February, next before the expiration of the time for which any senator is or shall be chosen as aforesaid, if the senate and assembly of this state be then in session, and if not, then within ten days after a quorum of both houses shall be assembled, at the then next meeting of the legislature of this state, an election shall be held in manner aforesaid, at the place where the senate and assembly shall be then sitting, for a senator as aforesaid, in the room of such senator so going out of office. And whenever the seat of any senator, chosen to represent this state as aforesaid, shall become vacant before the expiration of the time for which he is or shall be chosen, another senator shall be chosen in his room, in the manner aforesaid, within ten days after the legislature shall have notice of such vacancy, at the place where they shall be then sitting. Time of choosing senators. In case of vacancy.

CHAP. XXV.

An ACT concerning Writs of Error and to prevent Delays of Execution.

Passed 20th March, 1801.

[V.S. v. 2. 770.—J.&V. v. 1. 100. 228, 273.—K.&R. v. 1. 200.]

I. *BE enacted by the People of the State of New-York, represented in Senate and Assembly*, That writs of error in all civil cases, and in criminal cases not capital, shall be considered as writs of right, and issue of course, subject to the regulations prescribed by law; and in all capital cases, writs of error shall be considered as writs of grace, and shall not issue but by order of the chancellor made upon motion or petition, notice whereof shall be given to the attorney-general or prosecutor for the people. Writs of error, when of right. 6 John Rep. 337. Of grace.

II. *And be it further enacted*, That no execution shall be stayed by any writ of error, or *supersedas* thereon, brought to reverse any judgment given in any personal action, unless the party prosecuting such writ with two sufficient sureties, or in case of the absence of such party, unless three sufficient sureties to be approved of by the court in which such judgment shall be given, shall before such execution be stayed, become bound, unto the party in whose favor such judgment was given, by recognizance to be acknowledged in such court, in double the sum recovered by such judgment, conditioned to prosecute such writ of error to effect, and also to pay and satisfy, if such judgment shall be affirmed, the debt or damages and costs to be adjudged upon such judgment, and all costs and damages to be awarded for the delay of execution. Error, when supersedeas to execution in personal actions; 7 John Rep. 373. 3 Jac. 1 c. 8. 16 & 17 Car. 2 c. 8. 13 Car. 2 st. 2 c. 2. § 9.

III. *And be it further enacted*, That no execution shall be stayed by any writ of error, or *supersedas* thereon, brought to reverse When in dowry and ejectment.

16 and 17 Car.
2 c. 8. § 3, 4

any judgment given in any writ of dower or action of ejectment, unless the party prosecuting such writ of error, or in the absence of such party, one sufficient surety, shall become bound to the party in whose favor such judgment shall be given, by recognizance, in such reasonable sum as the court to which such writ of error shall be directed shall think fit, with condition, that if the party prosecuting such writ of error shall be nonsuited therein, or suffer the same to be discontinued, or if such judgment be affirmed, then such party shall pay to the party in whose favor such judgment was given, all such costs and damages as shall be awarded thereupon; and in order to ascertain such damages, the court in which such execution ought to be granted, upon such affirmation, discontinuance or nonsuit, shall issue a writ to enquire of the damages as well for the mense profits, as for any waste committed after such first judgment given, and upon the return thereof judgment shall be given and execution awarded for such damages, together with the costs of suit: *Provided*, That nothing contained in this, or the preceding section of this act, shall extend to any writ of error to be brought by an executor or administrator, nor to any popular action, or action on any penal statute, or in which the people of this state shall in any way be interested, nor to any indictment, presentment, inquisition or information.

Proviso.
16 and 17 Car.
1 c. 8. § 8.

Writ of error
on judgments
in supreme
courts not to
issue without
a certificate:

Under pe-
nalty.

Death be-
tween verdict
and judgment
no error.
17 Car. 2 c.
8. § 1.

Want of 15
days between
teste and re-
turn of jury
process and
execution,
when cured.

IV. *And be it further enacted*, That no writ of error shall issue to remove a judgment out of the supreme court, unless the party applying for such writ, shall first deliver to the officer whose duty it is to issue or seal such writ, a certificate signed by a counsellor at law in the said supreme court, setting forth, that he has examined the record and proceedings in the cause intended to be removed by such writ or copies thereof, and that in his opinion there is error in substance therein; and if any officer shall issue or seal any such writ of error without such certificate, he shall forfeit to the adverse party two hundred and fifty dollars, to be recovered with costs of suit in any court of record, by action of debt, or by information, and shall also upon conviction thereof, forfeit and lose his office.

V. *And be it further enacted*, That the death of either party between the verdict and judgment in any action, shall not be alleged for error, so as such judgment be entered within two terms after such verdict.

VI. *And be it further enacted*, That in all personal actions, and actions of ejectment, commenced by original writ, after issue joined to be tried by jury, or after judgment had, it shall not be alleged or deemed to be error, that there are not fifteen days between the teste and return days of any jury process, or any writ of execution, except writs of *capias ad satisfaciendum*, in order to charge bail, or on which a writ of *exigent* is to be awarded.

CHAP. XXIX.

An ACT relative to Treason.

Passed 20th March, 1801.

[J.&V. v. 2. 55.—Gr. v. 1. 346.—K.&R. v. 1. 214.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That if any person do levy war against the people of this state within this state, or be adherent to the enemies of the people of this state, giving to them aid and comfort in this state, or elsewhere, and be thereof attainted of open deed, such offences, and no other, shall be adjudged treason against the people of this state.

Treason de-
clared.
25 Ed. 3. st. 5
c. 2
1 H. 4. c. 10
1 Ed. 6. c. 12
1 M. st. 1. c. 1
§ 3

II. *And be it further enacted,* That concealment or keeping secret any treason shall be from henceforth adjudged, deemed and taken to be misprision of treason.

Misprision of
treason.
28 & 6 Ed. 6. c. 11
1 K. 2 Ph. &
M. c. 10

III. *And be it further enacted,* That all trials to be had for any treason, or misprision of treason, shall be had according to the course of the common law and this act, and not otherwise.

Trials thereof
to be accord-
ing to the com-
mon law
1 K. 2 Ph. &
M. c. 10 § 7

IV. *And be it further enacted,* That every person who shall be indicted for treason, or misprision of treason shall, if he or his agent or attorney require it, have a true copy of the whole indictment, with a list of the witnesses to be produced on the trial for proving the said indictment, mentioning their names, profession and place of abode, delivered unto him five days at least before he shall be tried for the same. And that every person indicted or tried for any treason, or misprision of treason, shall be admitted to make his full defence by counsel, and to make any proof that he can produce for his defence by witnesses on oath. And in case any person indicted shall desire counsel, the court before whom he shall be tried, or some judge thereof, shall immediately upon his request assign to such person so many counsel, not exceeding two, as he shall desire, to whom such counsel shall have free access at all seasonable hours. And that every person who shall be indicted and tried for any treason, or misprision of treason, shall have a copy of the panel containing the names, places of abode and additions of the jurors who are to try him, duly certified by the sheriff and delivered to him four days at least before he shall be tried. And that all persons so indicted shall have like process of the court where they shall be tried, to compel their witnesses to appear for them at such trial as is usually granted to compel witnesses to appear against them.

Person indic-
ed, to have a
copy of the in-
dictment and
list of witness-
es.
7 & 8 W. 3. c. 3
7 An. c. 21
And counsel
assigned, and
witnesses on
oath.

7 & 8 W. 3. c.
3 § 1

And copy of
the panel.

And process
for his witness.

V. *And be it further enacted,* That no person shall be indicted, tried or attainted of treason, or misprision of such treason, but by and upon the oath and testimony of two lawful witnesses, either both of them to the same overt-act, or one of them to one, and the other of them to the other overt-act of the same treason, unless the party indicted and arraigned, or tried, shall willingly without violence in open court confess the same. And if two or more distinct treasons, of divers heads or kinds, shall be alleged in one bill of indictment, one witness produced to prove one of the said treasons, and another witness to prove another of the said treasons, shall not be deemed or taken to be two witnesses to the

Two witnesses
necessary.
1 Ed. 6. c. 12
§ 23
5 & 6 Ed. 6. c.
11 § 13
1 Ph. & M. c.
10 § 11
7 W. 3. c. 3
§ 2, 4

No evidence
of acts not
charged

Peremptory
challenges.

Treason out
of the state,
or on sea, how
tried.

26 H. 8 c. 13
§ 4
35 H. 8 c. 2
§ 6 Ed. 6 c.
11 § 6
7 Ann. c. 21

Outlawry for
treason.

5 & 6 Ed. 6 c.
11 § 7, 8

Party outlawed
may sur-
render and
go to trial.

Proceedings
not to be
quashed after
evidence given.
7 & 8 W. 3,
c. 3.

Nor judgment
arrested for
mis-spelling.

Forfeiture for
treason.

26 H. 8 c. 13
§ 4
5 & 6 Ed. 6 c.
11 § 9

same treason within the meaning of this act. *And further*, That no evidence shall be admitted or given of any overt-act that is not expressly laid in the indictment; and if any person arraigned for treason or misprision of treason, shall peremptorily challenge above the number of thirty-five of the jurors returned, for the trial of such person, such challenge shall be disallowed, and the trial shall proceed as if no such challenge had been made.

VI. And be it further enacted, That all offences by this act declared to be treason, which shall be committed upon the land, out of this state, or upon the sea, shall and may be inquired of, heard and determined in the supreme court of this state by good and lawful men of the same county where the said court shall sit, in like manner and form to all intents and purposes as if the said treasons had been committed within the same county.

VII. And be it further enacted, That any person being indicted for any treason or misprision of treason, may be outlawed and thereby attainted of or for any of the said offences; and that all process of outlawry to be had and made within this state against any such offenders, being resident or inhabiting out of the limits of this state, at the time of the outlawry pronounced against them, shall be as effectual in the law as if such offenders had been resident and dwelling within this state at the time of such process awarded and outlawry pronounced. But if the party so outlawed, being out of the state as aforesaid, shall within one year next after the said outlawry pronounced or judgment given upon the said outlawry, yield or surrender himself to either of the justices of the said supreme court for the time being, and offer to traverse the indictment whereupon the said outlawry shall be pronounced as aforesaid, then he shall be received to make the said traverse; and if he shall thereupon be found not guilty by the verdict of the jury, he shall be acquitted and discharged of the said outlawry, and of the penalties and forfeitures by reason of the same; and upon the trial of such traverse the defendant shall in all respects have the benefit of this act.

VIII. And be it further enacted, That no indictment for any of the offences aforesaid, nor any process or return thereupon, shall be quashed on the motion of the prisoner or his counsel for mis-writing or mis-spelling, unless exceptions concerning the same be taken and made in the court where such trial shall be, by the prisoner or his counsel before any evidence given in open court upon such indictment; nor shall any such mis-writing or mis-spelling after conviction on such indictment be any cause to stay or arrest judgment thereupon; but nevertheless any judgment given upon such indictment shall be liable to be reversed upon a writ of error, in the same manner as if this act had not been made.

IX. And be it further enacted, That every person, being hereafter lawfully convicted of any manner of treason, shall forfeit to the people of this state all such lands, tenements and hereditaments which such offender shall have of any estate of inheritance in his own right at the time of such treason committed, or at any time after, and also all his goods and chattels, saving to every person and his heirs, other than the offender and his heirs, all

such rights and interests in law or equity, which they or any of them shall have at the day of committing such treason, or at any time before, in as large and ample manner as if this act had not been made. And the people of this state without any office or inquisition to be found, shall be deemed and adjudged in the actual possession of all the real and personal estate of the person so convicted or attainted which the people of this state ought lawfully to have, and which the offender so convicted or attainted shall so lose and forfeit.

Attainder not to extend to corruption of blood, or forfeiture of dower.
1 Ed 6 c. 12 §17
7 Ann. c. 31
17 Geo. 2 c. 39
§8

X. *And be it further enacted*, That no attainder of any person of treason or misprision of treason shall extend to corrupt the blood of the offender, or to forfeit the dower of his wife.

See Act Session 20, ch. 17. dower, &c.

CHAP. XXX.

An ACT concerning Idiots, Lunatics and Infant Trustees.

Passed 20th March, 1801.

[J.&V. v. 2 196.—Gr. v. 2. 25.—K. & R. v. 1. 216.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the chancellor shall have the care and provide for the safe keeping of all idiots and lunatics, and of their real and personal estates, and for their maintenance, and also for the maintenance of the families of such lunatics, and the education of their children, out of the personal estate of such idiots and lunatics, and the rents and profits of their real estates respectively, having regard to the amount and value of the same, and shall take care that the same be not wasted or destroyed.

Chancellor to have charge of idiots and lunatics.

4 Geo. 2 c. 20
17 Ed. 2 c. 1
c. 9, 20

II. *And be it further enacted*, That every committee of the estate of any idiot or lunatic shall, within six months after their appointment, file in the office of the register of the court of chancery, an inventory of the whole real and personal estate of such idiot or lunatic, and therein state the income and profits thereof, and the debts and credits of such idiot or lunatic, and make oath of the truth of such inventory, which oath the said register, or a judge of any court of common pleas, or any master in chancery, is hereby authorised to administer.

Inventory of their estates to be filed.

III. *And be it further enacted*, That when the personal estate of any idiot or lunatic, shall not be sufficient for the discharge of his debts, it shall be the duty of the committee for the estate of such idiot or lunatic, to present a petition to the chancellor, setting forth the particulars and amount of the estate real and personal of such idiot or lunatic, and of the debts by him owing; and if it shall appear to the chancellor that the personal estate is insufficient for the payment of his debts, he shall direct a sale of the whole or such part of the real estate of such idiot or lunatic as he may think necessary for the discharge of his debts; and that whenever the rents, profits and income of the estate of any idiot shall be insufficient for his maintenance, or of any lunatic shall be insufficient for the maintenance of him and his family and the education of his children, it shall be lawful for the chancellor, upon the like petition, and if upon the whole matter he

If personal estate be insufficient, chancellor to order their real estates to be sold.

4 Geo. 2. c. 19

Persons to
join in such
sales.

shall think it most beneficial, to direct a sale of the whole real estate of the said lunatic or idiot, or of so much and such part thereof as the said chancellor shall deem proper, and to direct how the proceeds of such sales shall be secured and the income or produce thereof appropriated; and that it shall be lawful for the chancellor, if he shall see cause, to join one or more persons with the said committee for the purpose of conducting such sales, and to give such orders and directions respecting the time and manner thereof as to him shall seem proper.

Partition of
their lands
held in com-
mon, &c. how
made.

IV. *And be it further enacted*, That in case any idiot or lunatic shall hold any real estate in joint tenancy, coparcenary or in common, and the interest of such lunatic or idiot or of any of the parties concerned therein, shall require a partition of such estate, then it shall be lawful for the said committee, by and with the consent and approbation of the chancellor, to agree to a partition of such estate, and thereupon to execute deeds or releases of the right of such lunatic or idiot to the part or parts falling to the share of the other joint tenants, coparceners or tenants in common; which deeds or releases shall be valid in law to convey the share and part of such lunatic and idiot. *Provided always*, That no deed shall be executed by any such committee by virtue of this act, until after a report shall be made to the chancellor of such sale or partition, and the same be approved of by him.

Proviso.

Chancellor to
decree per-
formance of
certain con-
tracts of lun-
atics.

V. *And be it further enacted*, That the chancellor shall have power to decree and compel a specific performance of any bargain, contract or agreement, which may have been made by any lunatic while in sound mind, to the like effect as if he had continued sane, and to direct the committee of the estate of such lunatic to do and execute all necessary acts for that purpose.

The estate, in
case of recov-
ery of lun-
atics, or death
of idiots or lu-
natics, how
disposed of.

VI. *And be it further enacted*, That the real estate of any idiot or lunatic, shall not be aliened or disposed of otherwise than is directed by this act; and in case any lunatic shall recover his right mind, his real and personal estate or the residue thereof shall be restored to him; and in case of the death of any idiot or of any lunatic during his lunacy, the real estate of such idiot or lunatic or the residue thereof shall descend to his heirs, and his personal estate or the residue thereof shall be distributed among his next of kin.

Infant trustees
may be order-
ed to convey,
&c.

VII. *And be it further enacted*, That it shall be lawful for any infant, seized or possessed of any lands, tenements or hereditaments by way of mortgage, or in trust only for others to convey the same by the direction of the court of chancery, signified by an order made on hearing all parties concerned, and on the petition of such infant or his guardian, or of any person in any way interested therein; and such infant may be compelled by such order to convey and assure any such lands, tenements or hereditaments to any other person, in such manner as the said court by such order shall direct; and such conveyance or assurance shall be as good and effectual in the law as if the same were made by such infant when of lawful age.

2 Ann. c. 19.

CHAP. XXXI.

An ACT for the better apprehending of Felons and other Offenders.

Passed 20th March, 1801.

[V.S. v. 2. 614.—J.&V. v. 2. 45.—Gr. v. 1. 335.—K.&R. v. 1. 218.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That when any felony shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every such felon by sheriffs, coroners, constables, marshals, and all other persons who shall be by them commanded or summoned for that purpose; and every competent person who will not do so, and be thereof convicted, shall be punished by fine according to the discretion of the court having cognizance of the offence; and every such officer who shall conceal or procure to be concealed any felony, or who shall not do his duty in the premises, and be thereof convicted, shall be punished by fine and imprisonment, in the like discretion of any court having cognizance of the offence.

II. *And be it further enacted,* That in case any person against whom any warrant shall be issued by any justice of the peace for any offence, shall escape, or be in any other county out of the jurisdiction of the justice granting the warrant, it shall be the duty of any justice of the peace of the county where such person shall be, upon proof of the hand writing of the justice granting the warrant, to indorse his name on the same, which shall be a sufficient authority to the person bringing the warrant, and to all other persons to whom it was directed, to arrest the offender in the county where the warrant was indorsed, and to bring him before any justice of such county; and in case the offence be bailable, and the offender be willing and ready to give bail to appear and answer at the next court having cognizance of the offence in the county where it was committed, the justice before whom he is brought shall take bail accordingly, and deliver the recognizance, examination of the prisoner, and all the proceedings before him had to the officer or other person having charge of the prisoner, who shall take and deliver the same to the clerk of the court in which such offender is bound to appear; and such recognizance and examination or confession shall be equally valid as if taken in the county where the offence was committed; and any officer or other person refusing or neglecting to deliver over the same to the clerk as aforesaid, shall forfeit twenty-five dollars, to be recovered against him by action of debt or information by any person who will sue therefor; And if such offence be not bailable, or the offender shall not give bail to the satisfaction of the justice before whom he shall be so brought, then the officer or other person having charge of the prisoner, shall convey him to a justice of the peace of the county where the offence was committed, there to be dealt with according to law. *And further,* That no action shall be brought against any justice who shall indorse a warrant as aforesaid, for indorsing the same, but such ac-

Fresh pursuit to be made after felons.

St. Westm. 1. 3 Ed. 1. c. 9. 13 Ed. 1. st. 2. c. 6. 8 Geo. 2. c. 16.

Under penalty

Punishment for concealing felony.

If offender be in another county, warrant to be indorsed.

J. & V. v. 2. 12. § 8—Gr. v. 1. 300 301, § 8 23 Geo. 2. c. 36. § 11. 24 Geo. 2. c. 55

Proceeding on arrest of the offender in another county.

tion may be brought against the justice who originally granted the warrant, in the same manner as if the offender had been arrested in the county where the warrant was granted.

CHAP. XLIII.

An ACT concerning Coroners.

Passed 21st March, 1801.

[J.&V. v. 2. 40.—Gr. v. 1. 331.—K.&R. v. 1. 228.]

Coroners to be appointed in each county:

Constitution of the state, art. 20.

To inquire by grand jury in certain cases:

3 H. 7, c. 1.
4 Ed. 1, st. 2.
18 Ed. 1.

To commit offenders.

And bind over

And return their inquisitions:

1 and 2 Ph. & M. c. 13, § 5.

To reduce examinations to writing, and bind witnesses to appear.

Penalty for neglect of duty.

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That in every county of this state competent men shall be appointed as coroners, and it shall be the duty of every coroner to go to the places where any persons be slain, or suddenly dead, or wounded, or where houses are broken open, or treasure is said to be found, and forthwith to command twenty-four good and lawful men of his county to appear before him at such place therein as he shall appoint, and upon their oath or the oath of any twelve or more of them, and upon view of the body of any person slain, or suddenly dead, and the proof of witnesses, to inquire how, and in what manner, and when, and where, such person was slain or died, and who such person was, and of all the circumstances attending such death, and who were guilty thereof, either as principal or accessory, and in what manner, and to take and commit every one so found guilty, and also every one suspected of the death of any person, or of doing hurt to any person so as to endanger life, to the gaol of such county; and to make the like enquiry of persons who shall die in prison, or be killed by misfortune, and also of treasure found, and who were the finders or suspected thereof, and to attach such finders and bind them with at least two sufficient sureties, to appear before the next justices of oyer and terminer and gaol delivery in such county, to answer the premises; all which matters shall be inrolled by the coroners, and all coroners shall deliver their inquisitions and rolls to such justices in the respective counties, who shall proceed thereon against the offenders if they be in gaol, and if not, such justices shall deliver the same into the supreme court there to be proceeded upon according to law.

II. And be it further enacted, That every coroner upon any inquisition found before him, whereby any person shall be indicted of murder or manslaughter, or as accessory thereto before the fact, shall put in writing the effect of the evidence given to the jury before him, and bind the witnesses to appear and testify against such person at the next court of oyer and terminer and gaol delivery, to be holden in the same county, and shall certify the recognizances taken by him for that purpose, together with the said inquisition and evidence to such court; and in case any coroner shall neglect to perform any duty required of him by this act, and be thereof convicted before any justices of oyer and terminer and gaol delivery in such county, he shall be fined at the discretion of such justices.

III. *And be it further enacted*, That any return made and signed by any one of the coroners of any county in this state, to an, future process which shall issue from and out of any court of record in this state, directed to the coroners of such county generally, shall be as good and valid in law, as if such return was made and signed by all the coroners of such county : but the act or return of any one or more of the coroners shall in no degree prejudice the rest.

Return by one coroner to process, good.

v. s. v. 2, 600
§ 1, 2

CHAP. XLIV.

An ACT concerning Promissory Notes.

Passed 21st March, 1801.

[V.S. v. 2. 772.—J.&V. v. 2. 228.—Gr. v. 2. 59.—Ibid. v. 3. 140.—K.&R. v. 1. 229.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That all notes in writing made and signed by any person or by a factor or agent of any merchant or trader usually entrusted therewith, whereby such person or any merchant or trader by such factor or agent, shall promise to pay to any other person, body politic or corporate, his or their order, or unto bearer, any sum of money therein mentioned, shall by virtue thereof be taken and construed to be due and payable as therein expressed; and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants; and that the payees or indorsees of every such note payable to them or their order, shall and may maintain their action for such sum of money, against the makers and indorsors of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Notes payable to order or bearer, negotiable like inland bills of exchange.
3 and 4 Ann. c. 9 § 1.
Cranch's Rep. v. 1. Appendix A
Dunlop vs. Silver, &c. all—the whole subject as at common law fully considered.

And may be sued in like manner.

CHAP. XLV.

An ACT to regulate the Exportation of Flax-Seed, and the Compensation to Measurers of Grain.

Passed 21st March, 1801.

[Br. Ed. 56.—V.S. v. 1. 57.—v. 2. 682.—J.&V. v. 2. 290, 299—Gr. v. 2. 123, 131.—K.&R. v. 1. 230.]

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly*, That no flaxseed shall be exported from this state to Ireland or Scotland but what shall be well cleaned and put in casks of two sizes only, one of which shall be of the following dimensions, viz. two feet nine inches long, and twenty-four inches diameter in each head, and made as nearly straight as possible, which shall contain seven bushels, and shall be made of oak, and the heads of pine or oak, with three hoops on each head, and three hoops on each bilge, and nailed with at least three nails in each head hoop, and three nails in each quarter hoop, with a good lining hoop on each head; the other size shall be made of like materials, and shall contain three and an half bushels, with the same number of hoops, and shall be nailed

Casks for flaxseed exported to Ireland or Scotland, how to be made.

3 Geo. 1 c. 7, § 38
7 & 8 W. 3 c. 39
1 Ann. st. 2 c. 4
4 Geo. 3 c. 29

Nailed

How branded. in the same manner, and on each cask shall be branded the name of the city or county where cleaned, with the initial letters of the christian and the surname at full length of the owner or person who cleaned the same.

Penalties for not obeying such directions.

II. *And be it further enacted*, That if any person shall ship on board of any ship or vessel for exportation to Ireland or Scotland, any flaxseed, which hath not been cleaned, marked and branded, as herein before directed, or in any other casks than such as are before mentioned, such person so offending shall forfeit and pay for every cask so shipped on board, the sum of one dollar and twenty-five cents; and the master or commander of every ship or vessel, who shall receive on board of any ship or vessel for exportation as aforesaid, any flaxseed not cleaned, marked and branded as aforesaid, or in any other cask than such as are before mentioned, shall forfeit and pay the sum of sixty-two and an half cents for every cask so taken on board.

Compensation to measurers of grain, coal, &c.
15 R. 2 c. 4
22 Car. 2 c. 8
22 & 23 Car. 2 c. 12
5 W. & M. c. 7 § 18
16 & 17 Car. 2 c. 2.

III. *And be it further enacted*, That the several measurers within this state shall be entitled to receive for measuring flax-seed, salt, wheat, rye, corn, buckwheat or any other article commonly sold by the bushel, three fourth parts of a cent per bushel, and no more; and for all coal measured, at and after the rate of twenty-five cents for every chaldron and no more; the one half to be paid by the buyer and the other half by the seller.

CHAP. XLVI.

An ACT to prevent excessive and deceitful Gaming.

Passed 21st March, 1801.

[J.&V. v. 2. 230.—Gr. v. 2. 60, 61.—K.&R. v. 1. 231.]

Securities for monies won by gaming, void.

9 Ann. c. 14.
33 H. 8 c. 9.
3 & 3 Ph. & M. c. 9.
16 Car. 2, c. 7

Mortgages & deeds of lands so given, to ensure to the representatives of grantor or as if he were dead.

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly*, That all notes, bills, bonds, judgments, mortgages or other securities, or conveyances whatsoever, given or executed by any person, where the whole or any part of the consideration of the same shall be for any money or other valuable thing won by playing at any game whatsoever, or by betting on the sides, or hands of such as do play at any game, or for the re-paying any money knowingly lent or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play to any person so gaming or betting as aforesaid, or who shall during such play so play or bet shall be void. And where such mortgages, securities or other conveyances, shall be of lands, tenements or hereditaments, or shall affect the same, such mortgages, securities or other conveyances, shall enure for the sole use and benefit of such person, as would be entitled to such lands, tenements or hereditaments, in case the grantor thereof, or other person so incumbering the same, had been dead, and as if such mortgages, securities or other conveyances, had been made to such person so to be entitled as aforesaid; and all grants and conveyances to be made, for preventing such lands, tenements or hereditaments.

from coming to or devolving upon the persons hereby intended to enjoy the same as aforesaid, shall be deemed fraudulent and void.

II. *And be it further enacted*, That every person who shall at any time or sitting, by playing at any game or by betting on the sides or hands of such as do play at any game, lose to any one or more persons so playing or betting, in the whole, the sum of twenty-five dollars in money, or any other thing of the value of twenty-five dollars, or in money and any other thing to such amount, and shall pay or deliver the same or any part thereof, it shall be lawful for such person within three months next thereafter, to sue for and recover the money or value of the things so lost and paid or delivered, or any part thereof, from the winner, with costs of suit, by action of debt founded on this act, in any court of record having cognizance of the same; in which action it shall be sufficient for the plaintiff to allege in his declaration, that the defendant is indebted to the plaintiff in the monies so lost and paid, or in the amount of the value of the things so lost and delivered, for so much money had and received by such defendant to the plaintiff's use without setting forth the special matter: And in case the person who shall lose such money or other thing as aforesaid, shall not within the time aforesaid, *bona fide*, and without collusion, sue and prosecute with effect, for the money or other things so by him lost and paid or delivered, it shall be lawful for any person by any such action, to sue for and recover the same, and treble the amount or value thereof with costs of suit against such winner; the one moiety of such forfeiture when recovered, to be paid to the overseers of the poor of the city or town in which such offence shall be committed, and the other moiety to the person who will sue for the same.

III. *And be it further enacted*, That every person who by virtue of this act shall be liable to be sued as aforesaid, shall be compellable to answer upon oath such bill as shall be exhibited in the court of chancery against him, for discovering the money or other things so won at play, contrary to the true intent and meaning of this act. And it shall be lawful for such court in which such bill shall be exhibited, to proceed and decree thereupon, and enforce such decree in the same manner as is used in other causes in such court.

IV. *And be it further enacted*, That upon the discovery and repayment, or delivery of the money or other things so to be discovered and repaid or redelivered, the person who, shall so discover and repay or redeliver the same, shall be discharged from any further or other punishment, forfeiture or penalty, which he may have incurred by the playing for or winning such money or other thing so discovered and repaid or redelivered.

V. *And be it further enacted*, That if any person shall by any fraud, or unlawful device or ill-practice whatsoever, in playing at any game, or by bearing a share in the wagers, or adventures in or betting on the sides or hands of such as shall play as aforesaid, win or acquire to him or to any other any sum of money or other valuable thing whatsoever, or shall at any one time or sitting, win of any one or more persons above the sum or value of

Persons losing by gaming to 25 dolls. may recover the same back.

9 Ann. c. 14, § 2.

How to dep. clare.

The loser not suing in three months, any person may sue and recover treble the amount.

4 John. Rep. 193.
7 John. Rep. 408.

Defendant compelled to answer in chancery on oath.
9 Ann. c. 14, § 3.
18 Geo. 2 c. 34, § 3.

Persons discovering and paying, discharged from further punishment.
9 Ann. c. 14, § 4.

Persons winning by fraud, or at one time or sitting above 25 dolls. to forfeit five times the value.
9 Ann. c. 14, § 1.

twenty-five dollars, and be convicted of any of the said offenses upon indictment or information, every such person shall forfeit five times the value of the money or other things so won as aforesaid; and in case of such ill-practice as aforesaid, the person so winning as aforesaid shall be deemed infamous, and shall be imprisoned for six calendar months, and such penalty may be recovered by any person who shall sue for the same in manner aforesaid; and when recovered shall be appropriated as herein above directed.

Winners by fraud deemed infamous, and to be imprisoned.

Persons winning or losing certain sums, to be indicted and fined five times the value.

How applied.

Offenders discharged on discovering others

All persons except parties, competent witnesses

Persons living by gaming, may be bound to good behaviour.

9 Ann. c. 14 § 6

What shall be a breach of the recognizance.
9 Ann. c. 14 § 7

VI. *And be it further enacted*, That if any person shall win or lose at play or by betting at any time, the sum or value of twenty-five dollars or upwards, or within the space of twenty-four hours, the sum or value of fifty dollars, such person shall be liable to be indicted for such offence, at any time within one year after it is committed; and being thereof legally convicted, shall be fined five times the value of the sum so lost or won; which fine, after such charges as the court shall judge reasonable to allow to the prosecutors and witnesses out of the same, shall be paid to the overseers of the poor of the city or town where such offence shall be committed, for the use of the poor thereof.

VII. *And be it further enacted*, That if any person so offending shall discover any other person so offending, so that such person be thereupon convicted, the person so discovering shall be discharged from all penalties by reason of any such offence, if such person so discovering hath not been before convicted thereof, and he shall be admitted as an evidence to prove the same.

VIII. *And be it further enacted*, That no person, other than the parties in the cause, shall be incapacitated from being a witness, touching any offence committed against this act by reason of having played, betted or staked at any game prohibited by this act.

IX. *And be it further enacted*, That it shall be lawful for any two or more justices of the peace in any city or county within this state, to cause to come before them, every person within their respective cities or counties, whom they shall have just cause to suspect to have no visible estate, profession or calling to maintain themselves by, but who do for the most part support themselves by gaming; and if every such person shall not make it appear to such justices, that the principal part of his expences are not maintained by gaming, then such justices shall require of him sufficient sureties for his good behavior for the space of twelve months; and in default of his finding such sureties, to commit him to the common gaol of the city or county there to remain until he shall find such sureties.

X. *And be it further enacted*, That if any such person so finding sureties shall during the time for which he shall be so bound to the good behavior, at any one time or sitting, play or bet for any money or other thing, exceeding in the whole the sum or value of two dollars and fifty cents, then such playing shall be deemed to be a breach of his good behavior and a forfeiture of the recognizance given for the same.

CHAP. XLVII.

An ACT for the more easy Pleading in certain Suits.

Passed 21st March, 1801.

[J.&V. v. 2. 52.—Gr. v. 1. 343.—K.&R. v. 1. 233.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That if any action upon the case, trespass, battery or false imprisonment be brought against any sheriff, coroner, justice of the peace, mayor, recorder or alderman, bailiff, constable, marshal, collector or overseer of the poor, and their deputies or any of them, or any other person who in their aid or assistance or by commandment, do any thing touching his or their office, for or concerning any matter or thing by them or any of them done by virtue of their office, the said action shall be laid within the county where the trespass or fact be done and committed, and not elsewhere; and it shall be lawful for every person aforesaid to plead thereunto the general issue, and give the special matter in evidence. And if upon the trial of any such action, the plaintiff shall not prove that the cause of his action arose within the county wherein such action is laid, in every such case the jury which shall try the same shall find the defendant not guilty, without having regard to any evidence given by the plaintiff touching the cause for which such action is brought: And if the verdict shall pass with the defendant, or the plaintiff become nonsuit or suffer any discontinuance, in every such case, the court in which the action shall be brought, shall by virtue of this act, allow unto the defendant or defendants his or their double costs, which he or they shall have sustained by reason of his or their wrongful vexation in defence of the said action, for which the said defendant or defendants shall have like remedy as in other cases where costs are given to defendants.

Actions against sheriffs and others, for acts done by virtue of their office, declared local. Caines's Rep. v. 1.

7 Jac. 1 c. 5
21 Jac. 1 c. 12
24 Geo. 2 c. 12

The general issue pleadable.

Double costs to defendant.

II. *And be it further enacted*, That if any action shall be brought against any person for taking of any distress, making any sale, or any thing done by authority of any statute of this state, the defendant in every such action may plead not guilty, or otherwise make avowry, cognizance or justification for the taking of such distress, making of sale, or other thing done by virtue of such statute, alleging therein, that such distress, sale, trespass, or other thing whereof the plaintiff complains, was done by authority of such statute, without expressing any other matter or circumstance contained in such statute, to which avowry, cognizance or justification, the plaintiff shall be admitted to reply, that the defendant did take the said distress, make the said sale, or did any other act or trespass supposed in his declaration of his own wrong, without any such cause alleged by the said defendant, whereupon the issue in every such action shall be joined to be tried by a jury; and upon the trial of that issue the whole matter may be given in evidence by both parties; and after such issue tried for the defendant, or nonsuit of the plaintiff after appearance, the same defendant shall recover treble damages with his costs, which damages shall be assessed by the same jury which shall

Persons sued for acts done by authority of any statute, how to plead.

21 Jac. 1 c. 4
§ 4, 5
11 Geo. 2 c. 19
§ 21

Replication of the plaintiff.

Treble damages to defendant.

try the issue, or upon a writ to inquire of the damages as the case may require.

In suits for the people of this state on contracts, how to declare.

III. *And be it further enacted*, That in every action to be brought in the name of the people of this state, or on their behalf, on any contract or agreement whatsoever, sealed or not sealed, it shall be sufficient to state or declare, that the defendant or ancestor, testator or intestate, as the case may be, was indebted to the people of this state in the sum demanded, by reason of the breach of such contract or agreement, according to the nature of such action, whereby an action had accrued to the people of this state to demand and have the sum so demanded, and that the particular grounds of such demand and the special matter may be given in evidence upon such declaration : and in any such action any part of the sum so declared for, as far as the testimony will warrant, may be recovered. And in all actions to be brought in the name or on the behalf of the people of this state, for the recovery of any debt appertaining or accruing to the people of this state by reason of any outlawry, forfeiture, gift of the party, or by any other collateral way or means, it shall be sufficient to allege generally, that the party to whom the said debt was owing or belonged, did on such a day and year give the same to the people of this state, or was outlawed, or did commit some act by reason whereof the said debt did accrue to the people of this state, and the special matter may be given in evidence upon such declaration, *And further*, That in all cases where the people of this state shall be interested in the event of any suit, the same shall be defended by or under the direction of the attorney-general at the expence of this state, and he may employ such counsel to assist in and concerning every such defence, as the person administering the government of this state shall from time to time deem necessary.

In suits for debts arising on forfeitures, &c. how to declare.

Attorney-general to defend suits in which the people are concerned.

CHAP. XLVIII.

An ACT to prevent and punish Rapes, and the forcible taking of Women.

Passed 21st March, 1801.

[J.&V. v. 2. 47.—Gr. v. 1. 338.—K.&R. v. 1. 235.]

Rape committed on a woman child under ten years, declared felony :
18 El. c. 7
13 Ed. 1 st. 1. c. 14
Or on any woman.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That if any person shall unlawfully and carnally know any woman-child under the age of ten years, every such unlawful and carnal knowledge shall be adjudged a rape and felony. And if any person shall by force ravish any woman-child of the age of ten years or upwards, or any other woman, it shall be adjudged felony.

II. *And be it further enacted*, That if any person shall take any woman against her will, unlawfully, and marry her, or cause her to be married to any other person by the assent of such misdoer, or defiled, every such taking, and the procuring and abetting the

Forcible taking and marrying women against their

same shall be felony, and punishable as in cases of rape. And every taker, procurer and abettor to the same, shall be adjudged a principal felon: *Provided however*, That nothing in this section contained shall extend to any person taking any woman, only claiming her as his ward or bond woman.

CHAP. XLIX.

An ACT for Relief against absconding and absent Debtors.

Passed 21st March, 1801.

[V.S. v. 1. 298, 316, 392.—Ibid. v. 2. 612, 717.—J.&V. v. 1. 82, 184, 254.—Ibid. v. 2. 112—Gr. v. 1. 53, 114, 214, 406.—K.&R. v. 1. 236.]

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly*, That whenever any person, other than those who may be liable to be declared bankrupts under the laws of the United States, being indebted within this state, shall either secretly depart from or keep concealed within the same, any one creditor or joint company to whom such person is indebted in the sum of one hundred dollars or upwards, or any two to whom he is indebted in the sum of one hundred and fifty dollars or upwards, or any three to whom he is indebted in the sum of two hundred dollars or upwards, over and above all discounts, may apply to a judge of the supreme court, and make oath or affirmation in writing, that such debtor is indebted to him or them in one of the sums before mentioned, or in any sum exceeding the same, over and above all discounts, and that he or they do verily believe that such debtor is departed this state or concealed within it, with intent to defraud his creditors of their just dues, or to avoid being arrested by the ordinary process of law: which departure or concealment shall also be proved to the satisfaction of such judge by two witnesses; and on such proof, the judge shall issue his warrant to the sheriff of any one or more of the cities and counties of this state, commanding him to attach and safely keep all the estate real and personal of such debtor within his county, with all books of account, vouchers and papers relating thereto; which warrant the sheriff shall execute, and with the assistance of two substantial freeholders forthwith make a true inventory of all such estate so attached, and return the same, signed by himself, and the two freeholders, to the judge who issued the warrant.

II. *And be it further enacted*, That such judge shall immediately thereafter order notice to be given in two public newspapers of this state, one of which to be printed in the city of New-York, and the other by the printer to the state, that on application as aforesaid, he had directed all the estate of such debtor to be seized, and that unless he return and discharge his debts within three months after such notice, the estate will be sold for the payment of his debts.

III. *And be it further enacted*, That in case any sheriff shall seize any perishable goods, the judge who issued the warrant may, in his discretion, order such goods to be sold, and the mo-

will, or deliv-
ing them,
how punished
3 H. 7. c. 8

Creditors to a certain amount of absent or concealed debtors, may apply to a judge of the supreme court; [English statutes relating to bankrupts, &c.]

Proof to the judge;
13 El. c. 7
1 Jac. 1 c. 15
21 Jac. 1 c. 19
13 and 14 Car. 2 c. 24
5 Geo. 2 c. 30, &c. &c.

The judge to issue his warrant;
1 John. ca. 372
2 Caines Rep. 318
3 Caines Rep. 287, 323
How to be executed.

Notice of the attachment.

Perishable goods may be sold.

nies arising therefrom to be paid to the trustees to be appointed in pursuance of this act.

Claim of property how tried.

3 John. Rep. 360.

Charges of sale of perishable goods, or of such trial, how borne.

IV. *And be it further enacted*, That if any sheriff shall ignorantly seize any goods or effects which shall be claimed by any person as his property, such sheriff may summon and swear a jury to try the property thereof, and if the jury by inquisition find the property of the same to be in the person so claiming or in any other person than the said debtor, the sheriff shall forthwith deliver the goods or effects to the person in whom the property thereof shall be so found, or to his authorized agent, and shall not be liable to prosecution for such seizure; and all reasonable charges arising by the sale of such perishable goods or by the said inquest, if it find the property not to be in such debtor, shall be allowed and certified by the judge issuing the warrant, and paid out of the estate of the said debtor; but if the property of the goods or effects so claimed, be by such inquisition found in the said debtor, then all costs and charges arising by such claim and inquisition, or either of them, shall be paid by the person who made the claim, or procured or occasioned the said inquisition.

After notice, all payments or delivery of property to the debtor, fraudulent.

V. *And be it further enacted*, That if any person indebted to such absconding or concealed debtor, or having the possession of any of his property, shall after the first public notice aforesaid, pay any debt or deliver any such property to the absconding or concealed debtor, his attorney or assigns, the person so paying or delivering shall be deemed to have done it fraudulently, and shall answer for the value thereof to the trustees to be appointed by virtue of this act, or if sued for the same after the first public notice aforesaid, by the absconding or concealed debtor, he may plead the general issue, and give this act and the special matter in evidence.

Sales and assignments by debtor after notice, void.

VI. *And be it further enacted*, That all sales of the estate real or personal of such absconding or concealed debtor, and all assignments of any bill, note or other chose in action belonging to him, made after the first public notice aforesaid, shall be null and void.

In what cases the debtor entitled to a subpoena to the attachment and proceedings thereon.

2 John.ca.137.

VII. *And be it further enacted*, That if such debtor shall before the appointment of trustees hereinafter mentioned, by himself or attorney, by petition to the said judge, offer to prove to the court of which he is a judge in open court, that he is a resident within this state, and was not within thirty days before issuing the warrant nor at any time after, nor is then absconding or concealing, and thereby pray that the same may be heard at the next term of such court, and shall at the same time execute and deliver to the creditor or creditors who procured the warrant a bond with sufficient security, to be approved of by the said judge, in the sum of one hundred dollars, with a condition that such debtor shall prove to such court at the then next term the said facts offered in such petition to be proved, and which are to be stated in the said condition, the said judge shall then report his proceedings in the premises to the said court at the next term thereof, which court is hereby authorized to compel the parties and their witnesses to come into court and to hear the proofs and allegations of the parties in a summary way, and to determine

whether the matters in such petition have been satisfactorily proved; and if such court shall determine that they have, they shall then grant a *supersedeas* to such warrant or warrants, and such debtor shall recover his costs to be taxed by the said court in open court, of the creditor or creditors who procured the warrant or warrants to be issued; but if the court shall determine the matters in such petition not satisfactorily proved, then the obligee or obligees in such bond may by suit recover the penalty thereof with costs, the one moiety of such penalty, to the use of the obligee or his legal representatives, and the other moiety thereof when recovered and received to be paid to the trustees appointed by virtue of this act, to be by them distributed in like manner as other monies which may come to their hands as trustees by virtue of this act.

VIII. *And be it further enacted*, That if such debtor do not return within three months next after such notice, and satisfy his creditors, not having presented the petition or given the bond as aforesaid or having done the same, and the court shall have adjudged the matters in such petition not satisfactorily proved, and shall have refused to grant a *supersedeas* to such warrant, then in either of the said cases, the judge who issued the warrant, or any other judge of the same court, shall nominate and appoint under his hand and seal, three or more fit persons to be trustees for all the creditors of such debtor; which trustees shall before they proceed, take an oath or affirmation, to be administered by the judge appointing them, well and truly to execute the trust by that appointment reposed in them, according to the best of their skill and understanding.

Trustees when and by whom to be appointed.

Oath of trustees.

IX. *And be it further enacted*, That the said trustees or any two of them, shall, as soon as may be thereafter, give notice in two of the newspapers printed in this state, one of which to be printed in the city of New-York, and the other by the printer to the state, of their appointment, and require all persons indebted to such absconding or concealed debtor, by a day certain to be mentioned in the notice, to pay all debts and sums of money which they owe to such debtor, and deliver all property of such debtor which they have in possession to the said trustees, and also to desire all creditors of such debtor, by a day to be mentioned in the notice, to deliver to them or one of them, their respective accounts and demands against such debtor.

Trustees to notify their appointment and to require the creditors and those who owe such debtor to exhibit and pay.

X. *And be it further enacted*, That each of the said trustees may take into their hands all the estate of such debtor, whether attached as aforesaid or afterwards discovered by them, and all books, vouchers and papers relating to the same; and the said trustees from their appointment shall be deemed vested with all the estate of such debtor, and shall be capable to sue for and recover the same; and all debts and things in action, due or belonging to such debtor, and all the estate attached as aforesaid, shall be by the sheriff who took the same delivered over to the said trustees, and the trustees, or any two of them, shall sell at public vendue, after fourteen days previous notice of the time and place, all the estate real and personal of such debtor as shall come to their hands, and deeds and bills of sale for the same

Trustees vested with the debtor's estate and may sell the same.

make and execute, which deeds and bills of sale shall be as valid as if made by such debtor before the first public notice aforesaid.

Persons concealing effects or debts, to forfeit double the value.

XI. *And be it further enacted*, That if any person indebted to the said absconding or concealed debtor, or having the custody of any property belonging to him, shall conceal the same, and not deliver a just account thereof to the said trustees, or one of them, by the day for that purpose appointed, the person concealing and not delivering as aforesaid, shall forfeit double the sum of the debt, or value of the property so concealed, or not accounted for; to be recovered by action by the said trustees, and applied as hereinafter directed. And the court before whom such action shall be brought, is hereby empowered to compel the person, so concealing and not accounting as aforesaid, to appear before it, and be examined on oath touching the premises, and to commit such person to prison if he refuse to be examined, or being examined, refuse to answer satisfactorily to such court.

To be recovered by the trustees.

Persons so concealing, to answer on oath.

Any justice, on behalf of trustees, to issue his warrant against any person.

XII. *And be it further enacted*, That the said trustees, may apply to any justice of the peace, who in such case is required to grant a warrant, commanding the said absconding or concealed debtor, his wife, and every other person known or suspected to detain any part of his estate, or to be indebted to it, or to know any thing concerning the concealment or embezzlement thereof, to be brought before him at such place as he and the trustees shall appoint, where the said justice or in his absence any other justice to be requested by the said trustees, shall be present, at which meeting either the said justice or the said trustees, or both, may examine on oath to be administered by the justice, every person so brought before them on the said warrant, touching all matters relative to the said debtor, his dealings, and his estate, and reduce the examination to writing, which the said person is hereby required to sign; and if the said person shall refuse to be sworn or to answer, or shall not answer to the satisfaction of the said justice, all lawful questions to be put by the said justice and trustees, or the major part of them present, as well by word of mouth as by interrogatories in writing, or shall refuse to sign the examination, not having any reasonable objection, either to the wording thereof or otherwise, to be allowed by the said justice, the said justice shall then by warrant, commit such person to prison, there to remain without bail, until he shall submit to do what shall be required of him as aforesaid: *Provided always*, That the said warrant of commitment shall specify the particular default of such person, and if it be in not answering any question, such question shall be specified in the warrant: *And provided also*, That if such person shall bring any *habeas corpus*, to be discharged from imprisonment, and on the return thereof, there shall appear any insufficiency in the form of the warrant, then the court or judge before whom such person shall be brought by the said *habeas corpus*, shall by order or warrant, re-commit him, unless it shall be made to appear that he hath answered all lawful questions put to him, or had sufficient reason for refusing to sign the examination, as the case may be; and if such person be wilfully suffered to escape from prison, the gaoler or keeper, wilful-

Such person to be examined on oath relative to the debtor and his estate.

Persons refusing to be examined or to sign the same, to be committed.

Provido, that warrant specify the default.

Further proviso, that such persons bringing *habeas corpus* are not to be discharged for want of form.

ly suffering the same, and being thereof convicted on indictment or information, shall forfeit to the trustees a sum equal to all such sum, as shall be owing to the creditor or creditors of such absconding or concealed debtor; *Provided*, the same does not exceed two thousand five hundred dollars, to be sued for and by them recovered and distributed as herein after directed.

XIII. *And be it further enacted*, That the survivors or survivor of the said trustees shall have all the powers given to the said trustees by this act, and that if any person, so to be examined, shall wilfully and knowingly swear or affirm falsely, he shall be liable to the pains and penalties of wilful and corrupt perjury.

XIV. *And be it further enacted*, That any person, other than those who have the effects in possession, who shall discover any secreted effects of such debtor, so that they be recovered by the said trustees, shall be entitled to ten per cent. on the value of the effects so discovered, to be paid by the trustees out of the estate of the said debtor.

XV. *And be it further enacted*, That the said trustees, or any two of them, are hereby empowered to settle all matters and accounts between such absconding or concealed debtor, and his debtors or creditors, and to examine any person on oath concerning the same, which oath may be administered by any of the said trustees, two of them being present.

XVI. *And be it further enacted*, That in case any controversy shall arise concerning any claim by any creditor of such absconding or concealed debtor, or concerning any debt or demand claimed by the said trustees as such, the said trustees or any two of them may have such controversy determined in the following manner, to wit: The said trustees or any two of them may nominate two referees, not being creditors of such debtor or otherwise interested in such controversy, and the other party in such controversy shall nominate two indifferent persons to be referees, and their names shall be separately written on four pieces of paper, as nearly as may be of one size and figure, which shall be rolled up separately in the same manner and put into a box, and from thence one of the trustees shall draw out three of them and the persons whose names are so drawn shall finally settle the controversy; and if any referee so appointed shall refuse or be incapable to act in a reasonable time, a new choice shall be made in manner aforesaid of another in his stead; and in case the other party to such controversy shall refuse to nominate referees, then any two of the trustees may nominate for him and proceed to the final settlement of the controversy as aforesaid.

XVII. *And be it further enacted*, That the trustees shall convert the estate of such debtor into money, and any two of them shall, by public notice in two of the public newspapers as aforesaid request a general meeting of the creditors of such debtor to see the debts due to each ascertained, at a certain time and place to be specified in the notice, not less than two nor more than three months thereafter, nor more than one year and an half from the time of their first appointment; at which meeting, or other adjourned meeting if necessary thereafter, when all accounts shall be fairly adjusted, the trustees shall proceed to make distribution.

1 John. Rep.
165
Charges and
commissions
to be deduct-
ed.

bution among the creditors in proportion to their respective just demands, of all monies that shall come to their hands for that purpose, first deducting thereout all legal charges and commissions; in which payment no preference shall be allowed to debts due on specialties; and if the whole of such debtor's estate be not then distributed, the trustees or any two of them shall within one year thereafter, make a second dividend of all such monies as shall have come to their hands after the first division, and so from year to year, until a distribution shall have been made as aforesaid of all the estate of such debtor; and the surplus, if any, after all just debts and legal charges as aforesaid are satisfied, shall be paid to such debtor or his lawful representatives.

Surplus to go
to the debtor.

Creditors
whose de-
mands are not
due, to be
paid on a re-
bate of inter-
est.

XVIII. *And be it further enacted*, That any person who may have given credit to any such debtor on a valuable consideration for any sum of money not due at the time of any such distribution but payable afterwards, shall nevertheless be considered a creditor and receive his dividend, on deducting therefrom a rebate of legal interest for what shall be received from the time of actual payment thereof to the time such debt would have become due.

Creditors not
exhibiting
their demands
or refusing to
adjust the
same exclud-
ed from the
dividend.

XIX. *And be it further enacted*, That if any creditor shall neglect or refuse to give notice of, or deliver to the said trustees an account of his demand, or having a controversy relating thereto, or concerning the estate of such debtor, shall refuse to settle the same with the trustees in manner aforesaid, until after distribution aforesaid, such creditors shall not be entitled to any dividend, and the monies in hand shall be divided among the other creditors; but if such creditor shall comply as aforesaid before any second distribution as aforesaid, then such creditor shall have the sum he would have been entitled to on the first distribution before any second dividend be made.

May comply
before second
dividend.

Creditors out
of the state
may act by
attorney.

XX. *And be it further enacted*, That any creditor residing out of this state shall be deemed a creditor within this act, and his attorney on producing a letter of attorney duly authenticated and legal proof of his demand, may proceed and act in the same manner under this act as if the creditor himself were present.

Debtor on gi-
ving security
before trustees
appointed, en-
titled to a *supersedeas*.

XXI. *And be it further enacted*, That if any such debtor shall before the appointment of trustees, apply in person or by attorney to the judge who issued the warrant, and give such security as such judge shall approve to the creditor at whose instance the warrant issued, to appear and plead to any action to be brought in any court of law or equity in this state, within six months thereafter, against him by such creditor, and to pay such sum as may be recovered in such action, in that case such judge shall issue a *supersedeas* to the warrant, and no further proceedings shall be had thereon. *And further*, That where any vessel or part thereof shall be attached, the judge who issued the warrant may cause such vessel or part thereof to be valued by indifferent men, and if any person will give security, to be approved by the said judge, to the people of this state for the benefit of the creditors of such debtor, to pay the amount of such valuation to the trustees, the said judge shall cause such vessel to be discharged from the attachment.

Vessel may
be discharged
from attach-
ment on secu-
rity.

XXII. *And be it further enacted,* That where any such debtor or shall die after the time fixed for his appearance in the notice aforesaid shall have expired, the proceedings shall go on to a final conclusion and with equal validity as if such debtor had lived.

Death of debt or after expiration of the time in the notice, not to stay proceedings.
Debtors residing out of this state, within this act.

XXIII. *And be it further enacted,* That the estate real and personal of every debtor who resides out of this state and is indebted within it, shall be liable to be attached and sold for the payment of his debts, in like manner in all respects, as nearly as may be, as the estates of debtors residing within this state. *Provided always,* That instead of proof of absconding or concealment of such debtor, the creditor applying shall make proof by two witnesses, to the satisfaction of the judge, of the residence of such debtor out of this state, and in every such case no trustees shall be appointed until the expiration of one year after such public notice as aforesaid.

Provide.

Trustees not to be appointed in one year.

XXIV. *And be it further enacted,* That the first judge of the court of common pleas in each county, and the mayor and recorder of the city of New-York, and every of them, may put this act in execution in their respective counties. *Provided always,* That where warrants shall be issued by either of them, and also by a judge of the supreme court, in such case the judge of the supreme court shall award a writ of *certiorari* to the judge of the court of common pleas or mayor's court, as the case may be, to remove the proceedings before him, so that he may proceed upon both warrants or either of them.

The first judge of each county and the mayor and recorder of New-York, to execute this act.
Provide.

XXV. *And be it further enacted,* That the judge, mayor or recorder who shall issue any warrants in pursuance of this act, shall make report to the court whereof he is judge, of all the proceedings had before or done by him out of court under this act, and cause that report to be entered in the minutes of the said court; and such report or the entry thereof shall be full and conclusive evidence in all courts of record of the facts so reported. *And further,* That he shall cause the affidavits of the creditors within thirty days after taking the same, and the warrant with the sheriff's return within thirty days after the return thereof, to be filed in the office of the clerk of the court whereof he is judge, which clerk shall mark thereon the day and year of filing the same.

Judge to report proceedings to the court whereof he is a member.

Affidavits and warrants, and the sheriff's return to be filed in thirty days.

XXVI. *And be it further enacted,* That the judge appointing trustees as aforesaid, shall at the request of any one of them indorse on such appointment an allowance that the same may be recorded; which allowance, signed by a judge of the supreme court, shall be a sufficient authority to the secretary of this state and to the clerk of any county to record the same; and if signed by the said judge of the court of common pleas or mayor's court, shall be a sufficient authority to the clerk of the court whereof he is judge to record it; and any appointment of trustees as aforesaid or the record thereof, shall be conclusive proof in all courts that the debtor therein named was at the time absconding, concealed or absent, within the meaning of this act; and that the said appointment and proceedings previous thereto were regular. And if the said trustees shall by virtue of this act, sell any real estate of such debtor, they shall then cause their appointment duly proved or acknowledged and allowed, to be recorded either

Judge to indorse allowance on the appointment of trustees, in order to be recorded.

Such record to be evidence

Trustees selling land, to record their appointment.
2 Johns. ch. 278

in the secretary's office of this state or in the clerk's office of the county where the land lies.

Trustees to
keep regular
accounts.

Subject to the
orders of the
court.

2 John. ca. 107

To account
under oath.

Their coun-
tsipants.

XXVII. *And be it further enacted*, That the said trustees shall keep a regular account of all monies by them received as trustees, to which every creditor interested therein may at all reasonable times have recourse; and the said trustees shall be subject to such order for the more effectual execution of this act, as shall be made in the court of which the person appointing them is judge, and they shall render to such court on oath a just and true account in writing of their proceedings and accounts in the premises, which shall be filed with the clerk thereof: And the said trustees may before each dividend made retain in hand for their services, the sum of five per cent. on the whole sum which shall come into their hands, over and above all necessary disbursements in the premises.

Persons sued
for things
done under
this act, &c.
so plead, &c.

XXVIII. *And be it further enacted*, That if any person be sued for any matter or thing done in pursuance of this act, he may plead the general issue and give the special matter in evidence, and also that this act shall be beneficially construed for the creditors in all courts of record.

Persons im-
prisoned in
the state pris-
on, other than
for life, ab-
sconding
debtors within
this act.

XXIX. *And be it further enacted*, That every person imprisoned in the state-prison, other than persons adjudged to imprisonment for life, for offences committed after the twenty-ninth day of March, in the year one thousand seven hundred and ninety-nine, shall be deemed to be an absconding debtor within this act, and trustees may immediately, on the application of a creditor, be appointed, without any proof of concealment, or warrant issued, or notice given as aforesaid, or without any regard to the amount of the sum in which any such person may be indebted. And that it shall be lawful for the trustees to apply such sum, out of any surplus which may be remaining in their hands, after paying all the debts of the prisoner, which shall come to their knowledge, for the maintenance of the wife and children, and educating the children of such person, as the chancellor, or a judge of the supreme court, or of any court of common pleas, or mayor or recorder of any city, shall from time to time allow.

Proceedings
in such cases.

Persons dis-
charged from
state-prison, to
be restored to
their estates.

XXX. *And be it further enacted*, That whenever any person against whom any such proceedings as last aforesaid shall be had, shall be lawfully liberated from the said prison, it shall be lawful for the said trustees and they are hereby required, to deliver up to him all and singular the estate real and personal of such person which may then remain in their hands, after retaining a sufficient sum to satisfy all the lawful charges and expences which they may have incurred in the execution of their trust.

Proceedings
in certain ca-
ses against
persons impris-
oned for life.

XXXI. *And be it further enacted*, That where any person so proceeded against hath been or shall be imprisoned for life, for an offence committed previous to the said twenty-ninth day of March, it shall be lawful for the said trustees and they are hereby required, after the payment of all debts due by such person, and retaining a sufficient sum to satisfy all lawful charges and expences as aforesaid, to convey and deliver the residue of the estate real and personal of such person, to such person or persons as shall be legally entitled to the same.

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XXXII. *And be it further enacted*, That the recorder of the city of New-York shall be *ex officio* a commissioner, equally authorised and required with a judge of the supreme court, to do and execute the powers and duties which such judge is authorised and required to do and execute by virtue of this act.

Recorder of New-York invested with equal powers as a judge of supreme court under this act.

CHAP. LI.

An ACT for regulating Outlawries.

. Passed 21st March, 1801.

[3 & V. v. 2. 12.—Gr. v. 1. 302.—K. & R. v. 1. 246.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That in all actions of account, debt, detinue, annuity, covenant, conspiracy and of the case, and in all actions of replevin after a *capias in withernam* is returned that the person against whom it is issued has no goods, the like process may be had as in actions of trespass done with force and arms; and in these as well as in all other cases where process issues for taking the body, if it be returned, that the person against whom such process issued is not found, such process may be pursued to the *exigent* and outlawry thereupon.

Process of outlawry given in personal actions.

13 Ed. 1. st. 1. c. 11.
25 Ed. 3. st. 5. c. 17.
19 H. 7. c. 9.

II. *And be it further enacted*, That every sheriff shall hold a court in his county, either in person or by his sufficient deputy, on the first and third Monday in every month, in case any process shall require it, at the court-house in his county, to be called his county court, for the purpose of demanding persons upon *exigents* and pronouncing outlawries thereupon: And it shall be sufficient for the sheriff or his deputy to give the judgment of outlawry, and to return the same upon the *exigent*, without saying by the judgment of the coroners.

Sheriff to hold a county court to proclaim outlawries.

9 H. 3. c. 35.
3 & 3 Ed. 6. c. 26.
Bract. lib. 3. tract. 2. c. 11.
Dyer 223. pl. 24
3 Inst. 212.

III. *And be it further enacted*, That in every original writ of actions personal, and in all indictments and informations in which the *exigent* shall be awarded, to the names of the defendants in such writs, indictments and informations, additions shall be made of their estate or degree or mystery, and of the towns and counties of which they were or be conversant, and if by process upon the said writs, indictments or informations, in which the said additions be omitted, any outlawries be pronounced they shall be void; and before any outlawries pronounced, the said writs, indictments and informations, in which such additions shall be omitted, shall be abated by the exception of the party: *Provided always*, That although the said writs be not according to the records and deeds, by the surplusage of the additions aforesaid, they shall not be abated for that cause.

In all cases of outlawry the defendants addition to be given in the original writ, and in the indictment and information.

1 H. 5. c. 5.
5 Ed. c. 23. § 13, 14.
31 Ed. c. 3.

Provide.

IV. *And be it further enacted*, That no person, charged as accessory in any indictment, shall be outlawed until the principal be attainted, but such indictment may be nevertheless prosecuted, and the *exigent* against the accessory shall remain until the principal be attainted by outlawry or otherwise.

Accessories not to be outlawed until the principal be attainted.

3 Ed. 1. c. 14.

V. *And be it further enacted*, That after any person shall be indicted of treason, it shall be commanded to the sheriff to take

In treason if the person be not found, his

goods to be seized on the alias *capias*.
 25 Ed. 3. c. 14.
 8 H. 6. c. 10.
 10 H. 6. c. 6.
 18 Ed. 3. st. 1.
 6 H. 6. c. 6.

If not found on the alias the *exigent* to be awarded and the goods forfeited.

Proceedings to outlawry on indictment for treason against a person residing in another county.

Ut supra
 4 & 5 W. & M.
 c. 22.

Writs of proclamation and how executed.

31 El. c. 3.
 4 & 5 W. & M.
 c. 22.
 8 H. 6. c. 10.

the body of the person so indicted, and if the sheriff return on the writ that the body is not found, another writ of *capias* shall be immediately made returnable at a certain day, not less than three months after the date of the same writ; and in the same writ shall be comprised that the sheriff shall cause the goods and chattels of the person indicted to be seized and safely kept until the day of the return of the writ, and if the sheriff return that the body is not found, and the person indicted shall not appear, the *exigent* shall be awarded, and the goods and chattels so seized shall be forfeited to the people of this state, but if the person indicted appear, or be taken by the sheriff or other officer, before the return of the second writ, then the goods and chattels shall be saved.

VI. *And be it further enacted*, That upon every indictment against any citizen of this state, dwelling in any other county than where such indictment shall be taken, of any treason, after the first writ returned another writ shall be awarded, directed to the sheriff of the county where the person indicted is or shall be supposed to be conversant by the same indictment, returnable in the same court before whom the indictment shall be taken, at a certain day not less than three months after the date of the same writ, by which the sheriff shall be commanded to take the body of the person so indicted, if he or she shall be found in his county, and if he or she shall not be found in his county, the sheriff shall make proclamation in two of his county courts before the return of the same writ, that the person so indicted, appear at the said court at the day of the return of the same writ, to answer to the people of this state of the treason whereof he or she shall be so indicted; and after such writ so served and returned, if the person so indicted come not at the day of the return of the writ, the *exigent* shall be awarded against such person. And where any such indictment shall be taken before any other court or officer having authority to take the same, and be removed into the supreme court, no *exigent* shall be awarded by the supreme court until such writ with proclamation be awarded and served and returned as aforesaid, and if any *exigent* be awarded before such writ with proclamation be awarded, served and returned as aforesaid, and outlawry be thereupon pronounced the *exigent* and outlawry shall be void.

VII. *And be it further enacted*, That in every action personal, and in all cases of indictments and informations for trespasses or misdemeanors wherein any writ of *exigent* shall be awarded out of any court, one writ of proclamation shall be awarded out of the same court having the like teste and return as the said writ of *exigent*, directed to the sheriff of the county where the defendant at the time of the *exigent* so awarded shall be dwelling, which writ of proclamation shall contain the effect of the action, indictment or information, and such sheriff shall cause to be made three proclamations in the form following, that is to say: One of the same proclamations in his open county court, and one other at the general sessions of the peace in the county where the defendant at the time of the *exigent* awarded shall reside, and one other one month at least before the fifth demand by virtue of the



said writ of *exigent*, at or near the most usual door of the church of the town where the defendant shall reside at the time of awarding the said *exigent*, and if there be more than one church in such town, then at or near the most usual door of the church nearest the defendant's dwelling, and if there be no church in such town then at or near the most usual door of the church in the next town nearest the defendant's dwelling, and upon a Sunday immediately after divine service, if any there be; and if any such defendant shall at the time of awarding the *exigent* reside out of this state, then such writ of proclamation shall be directed to, and executed by the sheriff to whom the *exigent* shall be directed; and in such case, such writ of proclamation shall be published in one or more of the newspapers to be printed in the city of New-York, for twelve weeks before the return of the *exigent*: and all outlawries pronounced without writs of proclamation awarded and returned according to the form of this statute shall be void, and may be avoided by averment without suing out any writs of error.

VIII. *And be it further enacted*, That before any reversal of any outlawry be had, and before any allowance of any writ in error upon any outlawry, the defendant in the original action shall put in bail, if bail was required in such action, not only to appear and answer to the plaintiff in the former suit in a new action to be commenced by the said plaintiff, for the cause mentioned in the first action, but also to satisfy the condemnation if the plaintiff shall commence such suit before the end of two terms next after the allowing of the writ of error or otherwise avoiding of the said outlawry.

No outlawry reversed or error allowed until bail given. 81. El. c. 3. § 3. 4 & 5. W. & M. c. 18.

IX. *And be it further enacted*, That no person who shall be outlawed in any court for any cause whatsoever, other than for treason or felony, shall be compelled personally to appear in court to reverse such outlawry, but may appear by attorney, and reverse such outlawry without bail in all cases, except where special bail shall be ordered by the court.

Outlawries reversed by attorney, unless for treason or felony. 4 & 5. W. & M. c. 18. No bail unless by order of the court.

X. *And be it further enacted*, That in all cases where an outlawry shall be had before judgment in any personal action, the plaintiff may suggest and set forth his cause of action upon the roll of the *exigent* after the return of the same, upon which a writ shall issue to the sheriff of the county where the action shall be brought, to summon a jury to appear in the court where the action shall be brought, if the same shall be brought in any other court than the supreme court, and if the action be brought in the supreme court, then before the justice of the supreme court at the next circuit court to be held in the county where such action shall be brought, to inquire into the truth of the matters charged by the plaintiff, and to assess the damages that the plaintiff shall have sustained thereby; and if the action shall be in the supreme court, it shall be commanded in the same writ to the justice who shall hold such circuit court that he make a return thereof to the supreme court at the time in such writ mentioned; and upon the return of such writ, if the action shall be in the supreme court, or upon the execution of such writ if the action shall be in any other court, execution shall be awarded for the sum found by the jury

Upon outlawry in personal actions, plaintiff may suggest his cause of action on the roll, and recover by inquest his damages.

with costs, both upon the outlawry and prosecution of the said inquiry. *And further*, That upon the execution of every such writ of inquiry, the plaintiff shall prove his cause of action and damages in the same manner as if the defendant had appeared and traversed the same.

XI. *And be it further enacted*, That upon the payment of the sum so found upon such inquiry with costs, or where any outlawry shall be had after judgment in any personal action, upon payment of the debt or damages and costs adjudged, or upon the same being levied by execution, such outlawry and judgment shall be considered as satisfied, and shall cease to have any further or other operation; and an entry shall in such case be made on the roll of the *exigent* after the return of the same, and after the execution or return of the inquiry, where such inquiry shall be made, that the debt or damages and costs are paid or levied, the defendant as to the outlawry and any judgment and execution thereupon shall go without day. *And further*, That no outlawry in any personal action shall work any disability or forfeiture whatsoever in favor of any other person than the plaintiff at whose suit it shall be had.

Debt or damages being paid or levied, the operation of the outlawry to cease :

Entry thereof to be made.

Such outlawry to work no disability or forfeiture.
Ed. Litt. 6. b.

CHAP. LII.

An ACT relative to the Money of Account of this State.

Passed 21st March, 1801.

[Gr. v. 3. 363.—K.&R. v. 1. 250.]

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That all accounts in the treasury, all accounts in the county treasuries, all accounts in the several other public offices, all assessment rolls, and all accounts arising from proceedings in the courts of justice within this state, shall be kept and made out in the money of account of the United States; that is to say: In dollars or units, dimes or tenths, cents or hundredths, mills or thousandths, a dollar being four tenths of the pound heretofore used as the unit of money of account in this state, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

Money of account to be in dollars, dimes, cents and mills

Judgments and decrees for debt, damages or costs, to be rendered in dollars and cents.

No error in omitting parts of a cent

II. *And be it further enacted*, That in all judgments and decrees to be made or given in any court of justice for any debt, damages or costs, the amount thereof shall be computed and ascertained, as near as may be, in dollars and cents, rejecting lesser fractions, if any; and in all executions to be issued thereon, it shall only be necessary to mention the said amount in dollars and cents, and no judgment, decree or other proceeding, shall be considered as erroneous for, or by reason of, the omission of the fractional parts of a cent in any such computation.

CHAP. LIII.

An ACT to prevent malicious Maiming.

Passed 21st March, 1801.

[J.&V. v. 2. 215.—Gr. v. 2. 45.—K.&R. v. 1. 250.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall on purpose, and of malice aforethought, cut out the tongue, or put out the eyes

Malicious maiming described, and made felony.

See Brown v. Smith, 3 Cal. 80, 110, 120
judg. L. 176. mill, 1-96-6 L. 7
note v. same, Com. Law (2. 1301: 8 P. 86)

of any other person ; or if any person shall on purpose, and of ^{2. H. c. 8.} malice aforethought, and by lying in wait, unlawfully, cut out or ^{57. H. G. & 22. & 23. Car. 3.} disable the tongue, put out an eye, slit the nose or lip, or cut off or disable any limb or member of any other person, with intention in so doing, to murder or kill, or to maim or disfigure, in any the manners aforesaid, such other person, every such offence shall be deemed and adjudged felony ; and every person so offending, and every person who shall aid, abet, counsel, hire or command any person to commit any of the said offences, being thereof convicted or attainted, shall be and hereby are declared to be felons.

CHAP. LXII.

An ACT to prevent injury by Dogs.

Passed 24th March, 1801.

[V.S. v. 1. 244.—ibid. v. 2. 531.—J.&V. v. 2. 405.—Gr. v. 2. 228.—K.&R. v. 1. 276.]

I. *BE is enacted by the People of the State of New-York, represented in Senate and Assembly,* That if any dog shall kill or wound any sheep or lamb, the owner or possessor of such dog shall pay to the owner of such sheep or lamb the value thereof, to be recovered with costs of suit before any justice of the peate of the county where such offence shall be committed ; and if the owner or possessor of such dog, or of any dog which shall chase or worry any sheep or lamb, shall not within forty-eight hours after notice of any such act, cause such dog to be killed, he shall forfeit the sum of two dollars and fifty cents, and the further sum of one dollar and twenty-five cents for every forty-eight hours thereafter until such dog shall be killed, which forfeitures shall be for the use of any person who shall sue for the same, to be recovered with costs of suit in manner aforesaid, unless it shall appear to the satisfaction of the justice before whom any suit for the recovery thereof shall be brought, that it was not in the power of the owner or possessor of such dog to kill the same. *And further,* That it shall be lawful for any person who shall see any dog chase, worry or wound any sheep or lamb, to kill such dog ; *Provided however,* That nothing herein contained, shall be construed to prevent any shepherd or other person from making use of dogs to drive sheep under his care or owned by him.

Penalty on owners of dogs that kill or wound sheep :

Or chase them :

9 John. Rep. 232.

Any person may kill such dogs. *Provide.*

II. *And be it further enacted,* That if any dog shall attack any person peaceably travelling on any high way, or shall attack any horse in any carriage, or on which any person is mounted, and complaint thereof be made to any justice of the peace, if it shall appear to the justice that such complaint is well founded, and that such dog is dangerous, it shall then be the duty of such justice to order the owner or possessor of such dog to kill him, and if he shall not within forty-eight hours after having received such order cause such dog to be killed, he shall forfeit the sum of two dollars and fifty cents, and the further sum of one dollar and twenty-five cents for every forty-eight hours thereafter until such dog be killed, to be recovered and applied in manner aforesaid.

Owners of dogs that attack travellers, ordered to kill them :

Under a penalty.

Tax on dogs
in the county
of Richmond.

III. *And be it further enacted*, That in the county of Richmond there shall be the following additional provisions, to wit: The owner or possessor of any dog of three months old and upwards, kept by any one person or family, shall pay a yearly tax for the same of twenty-five cents, and if more than one dog be so kept, seventy-five cents for the second dog, and one dollar and fifty cents for every dog above the number of two, and it shall be lawful for the assessors of each town in the said county yearly, at the time of making their annual assessments, to enter in a book to be kept for that purpose the name of every person in their respective towns owning or keeping any dogs, and the number thereof, and it shall be the duty of such assessors to deliver an abstract from the said books to the collector of each town, with directions for collecting the tax aforesaid on the same, and the said collectors shall collect such tax and pay the same as herein after directed.

Tax how col-
lected.

IV. *And be it further enacted*, That if the owner or possessor of any one or more dogs shall neglect or refuse to pay the tax on the same as aforesaid, within twenty days after demand thereof made by the collector, such collector shall sue for and recover the same with costs before any justice of the peace of the county, and every person in possession of, or who shall suffer any dog to remain about his house for the space of twenty days before demand made by the collector as aforesaid, such person shall be deemed the owner of such dog and liable to pay the tax for the same, and such person may lawfully kill such dog if no other person within the said twenty days shall appear to claim him.

Tax how ap-
plied.

V. *And be it further enacted*, That the several collectors aforesaid may retain out of the money so to be collected, five per cent as a compensation for their trouble, and shall pay the residue thereof to the treasurer of the said county of Richmond, to be disposed of by the supervisors of the said county, by warrant upon the said treasurer, towards satisfying such damages as may arise in any year from dogs killing or injuring sheep, and the residue of the said tax, if any, after such damages are satisfied, shall be paid to the overseers of the poor of the respective towns in the said county, in proportion to the tax so collected in each town, towards the support of the poor thereof. *And further*, If any collector aforesaid shall neglect or refuse to do any thing herein before required of him to do, he shall for every offence forfeit and pay the sum of twelve dollars and fifty cents, to be recovered by action of debt with costs before any justice of the peace of the said county by any person who shall sue for the same, the one half when recovered to belong to the prosecutor and the other half to be applied to the uses aforesaid.

Penalty on
collectors for
neglect of du-
ty.

Damages
done by dogs
in the county
of Richmond,
how assessed
and paid.

VI. *And be it further enacted*, That when any person within the said county of Richmond shall sustain any damage by any dog, by killing or hurting any sheep belonging to him, he may apply to any two fence viewers of the town in which he resides, and if it shall appear to their satisfaction, on view of the sheep, that the same was killed or hurt by one or more dogs only, they shall so certify in writing, and also the value of the sheep or damage sustained, and the number killed or hurt, which certificate

signed by them shall be a sufficient voucher to the supervisors of the said county for paying the value of the sheep or damages therein expressed : *Provided however*, That if the owner or possessor of any such dog be known, the party injured shall demand satisfaction of him, and if he neglect or refuse to kill such dog and to make such satisfaction, the party injured shall get the value of the sheep or damages certified as aforesaid, and may thereupon recover the same with costs of suit of the owner or possessor of any such dog before any justice of the peace of the said county, or other court having cognizance thereof.

How recovered of the owner.

VII. *And be it further enacted*, That if any person shall see any dog chase, worry or wound any sheep, it shall be lawful for him to kill every such dog, unless the same be done by permission of the owner of such sheep.

Any person may kill dogs that chase sheep.

CHAP. LXXIV.

An ACT to prevent perjury.

Passed 24th March, 1801.

[Gr. v. 2. 35.—J.&V. v. 2. 206.—K.&R. v. 1. 313.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That if any person shall unlawfully and corruptly procure any witness by any means whatsoever to commit any wilful and corrupt perjury, in any matter or cause depending or to depend in the court of chancery, or in the court of probates, or in any court of record, or before any judge, justice of the peace, mayor, recorder or alderman, or shall unlawfully and corruptly procure any witness, who shall be sworn to testify *in perpetuam rei memoriam*, every such person shall for every such offence be adjudged guilty of subornation of perjury : And if any person, either by the subornation of another, or by his or her own act or consent, shall wilfully and corruptly swear or affirm falsely in any of the courts aforesaid, or before any person having competent authority to administer such oath or affirmation, every such person shall be adjudged guilty of wilful and corrupt perjury ; and every person convicted of subornation of perjury, or of wilful and corrupt perjury, shall not thereafter be received as a witness to be sworn in any matter or cause whatsoever until the judgment given against him or her be reversed.

Subornation of perjury,

*5 El. c. 9.
2 Geo. 3. c. 25.
11 W. 7. c. 25.
9 Geo. 2. c. 18.
23 Geo. 2. 11.*

Perjury.

Punishment for those crimes.

II. *And be it further enacted*, That in every information or indictment to be prosecuted against any person for wilful and corrupt perjury, either at the common law or upon this act, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath was taken, averring such court or person to have a competent authority to administer the same, together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of any record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court or person before whom the per-

*Substance of the indictment or information for perjury.
23 Geo. 3. c. 11.*

And for sub-
ornation of
perjury.

jury was committed. And that in every indictment or information for subornation of perjury either at common law, or upon this act, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth any part of any record or proceedings, either in law or equity, and without setting forth the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed.

Judges of the
supreme
court, & cir-
cuit, & courts
of oyer & ter-
miner to di-
rect prosecu-
tions for per-
jury;

Proceedings
on such pro-
secution.

III. *And be it further enacted*, That it shall be lawful for any judge of the supreme court, either at the supreme court or any circuit court, and for the justices of the courts of oyer and terminer and gaol delivery, sitting the court, or within twenty-four hours thereafter, to direct any person, examined as a witness upon any trial at such court, to be prosecuted for perjury, if there shall appear to him or them reasonable cause for such prosecution, and that the same would be proper, and to assign the party injured or other person undertaking such prosecution counsel, who shall do their duty without any fee or reward for the same; and every such prosecution shall be carried on without payment of any fees to any officer of the court who might otherwise claim the same; and the clerk attending when such prosecution is directed, shall without any fee or reward, give the party injured or other person undertaking such prosecution, a certificate of the same being directed, and the name of the counsel assigned him by the court, which certificate shall be proof that such prosecution was directed, but no such direction or certificate shall be given in evidence on the trial to be had upon a prosecution so directed.

CHAP. LXXXVII.

An ACT to prevent and punish Champerty and Maintenance.

Passed 30th March, 1801.

[J.&V. v. 2. 208.—Gr. v. 2. 38.—K.&R. v. 1. 343.]

No person to
prosecute for
others to have
part of the
thing in de-
mand.
St. Westm. 1
3 Ed. 1. c. 25
28 49.
Maintainers
how punished.
28 Ed. 1 st. 3
c. 11.
7 R. 2 c. 15
33 Ed. 1 st.
2, 3

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly*, That no officer or other person shall take upon him any business that is or may be in suit in any court, for to have part of the thing in plea or demand, and no person upon any such agreement shall give up his right to another, and every such conveyance and agreement shall be void. And every person who shall maintain any plea or suit in any court for lands, tenements or other things for to have part or profit thereof, shall be punished by fine or imprisonment, but this act shall not prohibit any person to have counsel of persons duly licensed for that purpose, or to take counsel of his parents and next friends.

Officers tak-
ing land while
the same is in
plea, or any
reward, sub-
ject to fine
and imprison-
ment.
23 H. 6 c. 9

II. *And be it further enacted*, That no officer, judicial or ministerial, shall take or receive any lands or tenements in fee, by gift, or by purchase, or to farm, or by champerty, or otherwise, so long as the thing is in plea in any court, nor shall take any reward thereof; and he who doth the contrary, either by himself

or by any other, or makes any bargain concerning the same, shall be punished by fine or imprisonment, as well he that purchaseth as he that shall sell the same.

III. *And be it further enacted*, That all persons who confederate by oath, agreement or other alliance, falsely and maliciously to indict, or cause to be indicted any person, or falsely to move and maintain any plea or suit, shall be adjudged conspirators; and all persons who move pleas and suits, or cause them to be moved, either by their own procurement, or by others, and sue them at their own proper costs, for to have part of the land or thing in controversy or demand, or part of the gains, shall be adjudged champertors.

Who are to be deemed conspirators.
33 Ed. 1 st. 2

And champertors.

IV. *And be it further enacted*, That whoever will complain of conspirators and maintainers of false quarrels, and the partakers thereof, may prosecute by bill without writ, or may cause them to be attached, that they be before the justices of the supreme court to answer unto the plaintiff by a writ out of the chancery in form following:

Conspirators and maintainers of quarrels may be sued by bill or writ.
33 Ed. 1 st. 3

“THE PEOPLE of the State of New-York, to the Sheriff of Greeting:—

Form of the writ.

“WE COMMAND you that if A. of G. shall make you secure of prosecuting his complaint, then put by gage and safe pledges, C. of D. that he be before our justices of our supreme court of judicature at on to answer the aforesaid A. of a plea of conspiracy and trespass, as the same A. can reasonably show that he ought to answer unto him thereof, and have you there the names of the pledges and this writ.”

V. *And be it further enacted*, That no person, by himself or by any other, shall take upon him to maintain quarrels of others, to the let and disturbance of law, upon pain of being punished by fine or imprisonment, and to lose his office if he be an officer.

1 Ed. 3 st. 2 c. 14
4 Ed. 3 c. 11
20 Ed. 3 c. 4
1 R. 2 c. 4
7 R. 2 c. 15

VI. *And be it further enacted*, That every person who shall maliciously be indicted for any treason, felony or trespass, and who shall dwell in any other county than where such indictment shall be taken, and be duly acquitted thereof by verdict, may after such acquittal, have his action upon the case against every procurer of such indictment, and if such procurer be convicted, the plaintiff shall recover treble damages.

Persons maliciously indicted out of their county, if acquitted, to recover treble damages.
8 H. 6 c. 10
§ 4

VII. *And be it further enacted*, That all gifts and conveyances made for maintenance shall be void.

Gifts, &c. for maintenance, void.

VIII. *And be it further enacted*, That no person shall buy or sell, or by any ways or means, procure any pretended right or title, or make or take any promise, grant or covenant, to have any right or title of any person to any lands, tenements or hereditaments, unless such person who shall so bargain, sell, covenant or promise the same, or his ancestors, or those by whom he claims the same, have been in possession of the same, or of the reversion or remainder thereof, or taken the rents and profits thereof, for the space of one whole year next before the said bargain, sale, covenant or promise made, upon pain that he who shall make any such bargain, sale, covenant or promise, shall forfeit the whole value of such lands, tenements or hereditaments.

1 R. 2 c. 9
8 H. 6 c. 9
7 R. 2 c. 15
Persons buying or selling pretended titles to lands, to forfeit the value of the lands.

32 H. 8 c. 9
1 John. Rep. 345
4 John. Rep. 304
5 John. Rep. 489
7 John. Rep. 251
8 John. Rep. 320, 479

Proviso.

aments; and the buyer or taker thereof, knowing the same, shall also forfeit the value of the said lands, tenements or hereditaments; the one half of the said forfeitures to be to the use of the people of this state, and the other half to the party that will sue for the same in any court of record, by action of debt or by information; *Provided always*, That it shall be lawful for any person, being in lawful possession, by taking of the yearly rents or profits of any lands, tenements or hereditaments, to buy or obtain, by any reasonable ways or means, the pretended right or title of any other person thereto.

Persons guilty of maintenance in any cause.

1 Ed. 3 st. 2
c. 14.
4 Ed. 3 c. 11
20 Ed. 3 c. 4
1 R. 3 c. 4
7 R. 3 c. 15
Or retaining others for maintenance, or guilty of embezzery.
28 Ed. 1 st. 3 c. 10
4 Ed. 3 c. 11
To forfeit 250 dollars.

IX. *And be it further enacted*, That no person shall hereafter unlawfully maintain, or cause or procure any unlawful maintenance in any matter or cause whatsoever, in suit and variance, concerning any lands, tenements or hereditaments, or any goods, chattels, debts, damages, or offences in any court in this state, or before any person who shall have authority to hear or determine concerning the same; and no person shall unlawfully retain for maintenance of any suit or plea any person, or embrace any freeholders, or jurors, by rewards, promises or other sinister labour or means, to maintain any matter or cause, or to the hindrance or disturbance of justice, or to the procurement or occasion of any false verdict in any court within this state, upon pain to forfeit for every such offence two hundred and fifty dollars, the one moiety thereof to the use of the people of this state, and the other moiety to him who will sue for the same, by action of debt or by information in any court of record.

Persons guilty of vexatious arrests in the name of persons either unknown, or without their consent.

3 Ed. c. 2 § 4

To forfeit treble damages to the party aggrieved.

And 50 dolls. to the person whose name is so used.

And to be imprisoned.

X. *And be it further enacted*, That if any person shall, by any ways or means, maliciously or for vexation and trouble, cause or procure any other person to be arrested or attached to answer in any court at the suit or in the name of any person, where there is no such person known or without the consent or agreement of such person, in such case every such person who shall so cause or procure any such arrest or attachment, shall for every such offence forfeit and pay to the party so arrested or attached treble the costs, damages and expences that the party so arrested and attached shall be put to, by reason of such arrest or attachment, to be recovered by action of debt, or by information in any court of record with costs of suit; and shall also forfeit and pay unto the person in whose name, and at whose suit such arrest or attachment was had, if any such person be known, fifty dollars for every such offence, to be recovered as aforesaid, and shall also upon conviction thereof be imprisoned for a time not exceeding six calendar months.

CHAP. LXXXVIII.

An ACT declaring it to be Felony to steal Bonds, Notes and other Securities for Payment of Money.

Passed 30th March, 1801.

[J.&V. v. 2. 245. § 9.—Gr. v. 2. 77. § 9.—K.&R. v. 1. 346.]

Stealing bills, bonds, notes, or public se-

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall steal or take

by robbery any bill of exchange, bond, order, warrant, bill or promissory note, for payment of any money, or any certificate or other public security issued or to be issued by the authority of the United States, or by authority of the legislature of this state for payment of money, or acknowledging the receipt of money or goods, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars are or may be termed in law a chose in action, it shall be deemed and construed to be felony of the same nature and in the same degree and in the same manner as it would have been if the offender had stolen or taken by robbery any other goods of the like value with the money due on such bill, bond, order, warrant, or note, or certificate, or other public security, or secured thereby and remaining unsatisfied, and such offender shall suffer such punishment as he or she ought to have done, if such offender had stolen or taken by robbery other goods of the like value as aforesaid.

curities made felony, and punishable in like manner as stealing goods of the same value.

3 Geo. 2. c. 25, § 3.
31 Geo. 2. c. 22. § 31.

CHAP. CXXIV.

An ACT to prevent digging up and removing Dead Bodies for the Purpose of Dissection.

Passed 3d April, 1801.

[J.&V. v. 2. 390.—Gr. v. 2. 219.—K.&R. v. 1. 420.]

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any person shall, with intent to dissect, dig up or remove, or be aiding or assisting in digging up or removing any dead human body, which shall have been interred in any cemetery or burial place within this state, or shall dissect, or aid, abet or assist in dissecting such human body, every such person shall be deemed guilty of a public offence, and being thereof convicted in the supreme court, or in any court of oyer and terminer and gaol delivery or general sessions of the peace, shall suffer such punishment by fine or imprisonment, or both, as the court before whom such conviction shall be had, shall in their discretion think proper.

The offense of digging up or dissecting dead human bodies, punishable by fine and imprisonment.

II. And be it further enacted, That the supreme court, or any court of oyer and terminer and gaol delivery, when any offender shall be convicted in any such court, of murder, for which such person shall be sentenced to suffer death, may at their discretion add to the judgment, that the body of such offender be delivered to a surgeon for dissection; and the sheriff who is to cause such sentence to be executed, shall accordingly deliver the body of such offender after execution done, to such surgeon as such court shall direct for the purpose aforesaid; Provided however, That such surgeon, or some other person by him appointed for that purpose, shall attend to receive and take away the dead body at the time of the execution of such offender.

Persons convicted of murder may be ordered for dissection.

Provided,

An ACT to lay a Duty on Strong Liquors, and for regulating Inns and Taverns.

Passed 7th April, 1801.

[V. S. v. 2. 771.—J.&V. v. 2. 283.—Gr. v. 2. 116.—K.&R. v. 1. 484.]

A commissioner of excise to be appointed in the city of New-York.

5R6 Ed.6.c.25
2Geo. 2. c. 28

Who shall be commissioners in the several towns.

Commissioners in the several towns to take an oath.

Form.

Oath to be certified and filed in the clerk's office of the town.

Penalty for neglect.

How to be recovered and applied.

I. *BE it enacted by the people of the State of New-York, represented in Senate and Assembly,* That it shall be lawful for the person administering the government of this state, by and with the advice and consent of the council of appointment, from time to time, to appoint such person in the city of New-York as they shall think proper, to be the commissioner for collecting the duty of excise of and from the several retailers of strong or spirituous liquors in the said city; and that the following persons shall be the commissioners for collecting the said duty in the several towns of this state, to wit: The supervisor of each town and any two justices of the peace resident therein, or in case there shall not be two justices or they shall be absent, then such neighbouring justice or justices in the same county as the supervisor of such town shall notify and associate with him for that purpose.

II. *and be it further enacted,* That the several commissioners of excise within this state, except in the cities of New-York, Albany, Hudson and Schenectady, shall annually and immediately before they grant any licence to any person to keep an inn or tavern, or sell or retail strong or spirituous liquors, take and subscribe the following oath before one of the justices of the peace of the county in which they reside :

" I, *one of the commissioners of excise for the town of* *in the county of* *do solemnly swear, in the presence of Almighty God, that I will not on any account or pretence whatsoever, grant any licence to any person within the said town of* *for the purpose of keeping an inn or tavern, except where it shall appear to me to be absolutely necessary for the benefit of travellers ; and that I will in all things, while acting as a commissioner of excise, do my duty according to the best of my judgment and ability, without fear, favour, or partiality, agreeable to law."*

And the person before whom such oath shall be taken and subscribed shall certify the day and year in which such oath was taken, and that the same was so taken and subscribed before him, on the back of the paper on which the same oath is so subscribed; and the person taking and subscribing the same shall within ten days thereafter, send or deliver the same to the clerk's office of the town for which he so acts as a commissioner of excise, and the clerk of such town shall file the same among the papers in his said office; and if any person who is hereby directed to take and subscribe such oath, shall presume to act as a commissioner of excise without having taken and subscribed the same, or if any such person shall neglect to return the same oath so subscribed and certified as aforesaid to the town clerk to be filed as aforesaid, within the time by this act limited, such person shall for every such neglect or refusal forfeit the sum of ten dollars to be sued for and recovered with full costs of suit by any person who will pro-

secute for the same, before any justice of the peace of the county where such neglect or refusal shall happen, the one moiety of which sum when recovered shall be paid by the person so suing and receiving the same to the overseers of the poor of the town in which such neglect shall happen for the use of the said town, and the other moiety shall be for the use of the person so suing for the same.

III. *And be it further enacted*, That it shall be lawful for the commissioners of excise in the several towns of this state, annually by writing under their respective hands and seals, and in the several cities aforesaid annually in the manner directed by their respective charters, or by any statute prescribing such manner therein, to grant to the several persons who shall reside in their respective cities or towns and apply for the same, a licence to retail strong or spirituous liquors under five gallons, which said respective licences shall continue in force from the time of granting the same until the first Tuesday of May next ensuing the date thereof, and no longer: *Provided always*, That no licence shall be granted in any of the said cities to retail strong or spirituous liquors for the purpose of keeping an inn or tavern, unless it shall appear to the commissioners thereof, that an inn or tavern at the place at which such permit is applied for, is necessary for the accommodation of travellers, and that the person applying for such licence is of good character, all of which shall be inserted in every such licence; *And provided further*, That no such licence shall be granted in any town of this state, unless three commissioners shall be present at the granting thereof, of which three the supervisor of the town shall always be one, nor until they or a majority of them then so present have satisfactory evidence that the person who applies for such licence is of good moral character, and of sufficient abilities to keep an inn or tavern, and that he has accommodations to entertain travellers, and that an inn or tavern is absolutely necessary at the place where such person resides or proposes to keep such tavern, for the actual accommodation of travellers as aforesaid; all of which they or a majority of them are hereby directed to put in writing by way of a resolve of the said board and severally subscribe the same, and within twenty days thereafter shall return such resolve to the office of the town clerk of the town for which they are commissioners, who is hereby directed to file the same and deposit it among the other papers of such town; and that all licences obtained, except the aforesaid board of commissioners are so actually present at the granting of the same, shall be considered as absolutely void.

IV. *And be it further enacted*, That it shall be lawful for the commissioner of excise in the city of New-York to determine the sum which each person applying for a licence to retail strong or spirituous liquors under five gallons shall pay for the same, not being less than five dollars, nor more than fifty dollars, as a duty of excise, which sum shall be paid to him by the person applying before the licence shall be issued as aforesaid; and that it shall al-

Commissioners annually to grant licences to retail spirituous liquors.

56 6. Ed. 6. c. 25
2 Geo. 2. c. 28
26 Geo. 2. c. 31
5 Geo. 3. c. 46
3 Car. 1. st. 3
4 Jac. 1. c. 4

How and to whom licences may be granted in the cities.

How and to whom in the several towns.

4 D. & E. 4. 1
1 John. Rep. 609
2 John. ca. 346.

Proceedings therein to be filed in the office of the town clerk.

Commissioners to determine the sum to be paid for each licence, under certain limitations.

to be lawful for the commissioners of excise in the city of Hudson and in the several towns in this state, to determine the sum which each person applying for a licence shall pay for the same, not being less than five dollars, nor more than thirty dollars, as a duty of excise, which together with the sum of seventy-five cents as a fee to the respective commissioners for granting such licence, shall be paid to them by the person applying for such licence before the same be issued as aforesaid; and the said commissioners are required to keep an account of the persons to whom licences shall be granted, and of the sums by them paid therefor, and to file the same with the clerk of such city or town on or before the first day of March in every year, and shall from time to time without delay pay the monies so to be by them received as aforesaid to the overseers of the poor of the respective cities and towns for which they are commissioners, to be applied to the relief of the poor thereof.

And to keep accounts thereof, &c. and pay the same to the overseers of the poor.

All persons licensed, to enter into recognizance.

26 Geo. 2, c. 31
5 & 6 Ed. 6, c. 25

[See acts relative to the cities of New-York, Albany, &c.]

To be filed in the office of the clerk of the city or county

The licence of offenders against this act may be suppressed

What persons need not enter into recognizance.

Penalty on persons retailing liquors without licence or entering into recognizance.
3 Calnes Rep. 137

4 Jan. 1, c. 4
3 Can. 1, c. 3.
No person to be prosecuted for selling metheglin, &c. not to be drunk in his house.

VI. And be it further enacted, That no person shall sell by retail any strong or spirituous liquors to be drank in his or her house, out-house, yard or garden, unless such person shall appear before a justice of the peace of the county in which he or she shall reside, or if in either of the said cities before the mayor, or in his sickness or absence the recorder thereof, and enter into recognizance to the people of the state of New-York, in the sum of one hundred and twenty-five dollars, conditioned that such person will not during the time that such person shall keep an inn or tavern, keep a disorderly inn or tavern, or suffer or permit any cock-fighting, gaming or playing with cards or dice, or keep any billiard table or other gaming table or shuffle board within the inn or tavern by him or her to be kept, or within any out-house, yard or garden belonging thereunto, which recognizance so to be taken, shall be lodged by the person before whom the same shall be taken with the clerks of the respective cities or counties where the same shall be taken; and if any person shall be convicted of an offence against this act, it shall be lawful for the courts of general sessions of the peace in the respective cities and counties in this state to suppress the licence of such offender; but that no person who shall be licenced to retail strong liquors, not to be drank in his or her house but carried elsewhere, shall be obliged to enter into recognizance as aforesaid.

VII. And be it further enacted, That if any person shall sell by retail any strong or spirituous liquors without having such licence as aforesaid, or if any person shall sell any strong or spirituous liquors to be drank in his or her house, out-house, yard or garden without having entered into such recognizance as aforesaid, every person who shall be guilty of either of the offences aforesaid, shall for each offence forfeit the sum of twenty-five dollars; *Provided always,* That no person shall be subject to be prosecuted by virtue of this act, for selling metheglin, currant wine, cherry wine or cider, to be by such person made, and which shall not be drank in his house, out-house, yard or garden.

VIII. And be it further enacted, That it shall be deemed an

offence against the people of this state, for any person who shall keep a public inn or tavern, to permit or suffer any cock-lighting, playing with cards or dice, or to keep any billiard table or other gaming table, or shuffle board within his or her house, or within any out-house, yard or garden belonging thereto, or therein to permit any kind of gaming by lot or chance; and that every person convicted of any offence against this act shall be punished by fine, and imprisonment, or either, at the discretion of the court in which any such conviction shall be had.

Gaming in an inn an offence against this act and how punished.

IX. *And be it further enacted*, That every keeper of any public inn or tavern in this state, except in the city of New-York, shall keep in his house at least two spare beds for guests, with good and sufficient sheeting and covering for such beds respectively, and provide and keep good and sufficient stabling and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle more than his own stock, for the accommodation of travellers, upon pain of forfeiting for every neglect or default of having either of the articles in this clause before mentioned, the sum of five dollars.

What accommodations innkeepers shall have.

Penalty for neglect.

X. *And be it further enacted*, That no person shall have a licence to sell any strong or spirituous liquors to be drunk in any store or house where merchant's goods are sold, unless such person shall also take at the same time a licence to keep an inn or tavern, and it shall appear necessary to the commissioners that an inn or tavern ought to be kept at such place for the actual benefit and accommodation of travellers as in other cases, nor unless such person shall actually keep the necessary spare bedding, stabling, hay and provender for horses, except in the city of New-York, and shall conform in all things to the rules prescribed by this act relative to the keepers of inns and taverns; and no strong liquors shall be sold by such person on any pretence to be drunk in the same room where such merchant's goods are sold.

No person to be licensed to sell liquors to be drunk in any merchant's store or house without also keeping an inn.

XI. *And be it further enacted*, That if any innholder or tavern keeper shall sell any strong or spirituous liquors to any apprentice, servant or slave, knowing or having reason to suspect or believe him or her to be such, without the consent of his or her master or mistress, such innholder or tavern keeper shall forfeit and lose every debt which such apprentice, servant or slave shall contract for any such liquor, and also for every such offence forfeit the sum of five dollars, to be recovered with costs of suit by the master or mistress of such apprentice, servant or slave; *And further*, That the licence of every such innholder or tavern keeper shall be and hereby is declared void from the time of such conviction; and such innholder or tavern keeper shall be and is hereby declared to be incapable of receiving any further or other licence for holding any public inn or tavern for the space of three years from the time of such conviction.

Innkeepers selling liquors to servants or slaves: their debt and forfeit a penalty and their licence.

Penalty how recovered.

XII. *And be it further enacted*, That if any innholder or tavern keeper or any other person shall take or receive directly or indirectly from any such apprentice, servant or slave, any cloathing or any other goods, chattels, wares or merchandize in payment

Forfeiture on receiving any goods in payment besides the above penalties.

for any such strong or spirituous liquors, or in pawn or pledge to secure any such payment, and thereof be convicted by the oath of any one credible witness, such person so offending, besides the payment of the penalty and forfeiture of the debt as aforesaid, shall within three days after such conviction restore to the master or mistress of such apprentice, servant or slave all such clothing or other property which such person shall have so taken or received from any such apprentice, servant or slave, or shall forfeit and pay unto the master or mistress of such apprentice, servant or slave double the value of the same, to be recovered by such master or mistress, his or her executors or administrators, with costs of suit in any court having cognizance thereof.

How to be recovered.

Innkeeper trusting any person other than travellers above a certain sum to lose the debt.
3 Cases Rep. 187.

And in a suit there or plaintiff liable to double costs

Securities taken for such debts to be void.

And every person convicted thereof to forfeit double the sum.

Proviso.

Every innkeeper to put up a sign,

Under a penalty.

Any person not licensed putting up a sign to forfeit the like penalty.

Penalties under this act not otherwise provided for, how to be recovered and applied.

XIII. *And be it further enacted*, That if any innholder or tavern keeper shall trust any person other than travellers above the sum of one dollar and twenty five cents for any sort of strong or spirituous liquors or other tavern expences, he shall lose every such debt and be incapable of suing for the same or any part thereof; and if any such innholder or tavern keeper shall sue therefor, the person sued may plead this act in bar or give the same in evidence under the general issue, and if the plaintiff in such suit shall become nonsuit, or a verdict or judgment shall be given for the defendant, every such plaintiff shall pay double costs.

XIV. *And be it further enacted*, That if any innholder or tavern keeper shall take from any person trusted as aforesaid any note or other security in writing for any sum above one dollar and twenty-five cents for any strong or spirituous liquors sold or drank at his house as aforesaid, under pretence by which to evade this act, every such note or other writing shall be void; *And further*, That every person who shall be convicted of an offence against this clause of this act, shall forfeit double the sum mentioned in, and intended to be secured by such note or other writing, to be recovered by action of debt or by information with costs of suit in any court having cognizance thereof; *Provided however*, That nothing herein contained shall be construed to debar any innholder or tavern keeper from taking or recovering any sum of money due to him from any person who may be a lodger in his house, or from travellers not residing in such city or town.

XV. *And be it further enacted*, That every innholder or tavern keeper shall within thirty days after obtaining his licence put up a proper sign on or adjacent to the front of his house with his name thereon, and keep such sign up during the time he shall keep an inn or tavern, under the penalty of one dollar and twenty-five cents for every month's neglect thereof; and that if any person who shall not have a licence as aforesaid shall erect or keep up such sign, he shall forfeit the like penalty of one dollar and twenty-five cents for every week such sign shall be so kept up.

XVI. *And be it further enacted*, That every penalty and forfeiture imposed by this act, may be recovered with costs of suit in any court having cognizance thereof by any person who will prosecute for the same to effect, unless this act has otherwise provided, the one moiety thereof, not by this act otherwise appropri-

ated, shall when recovered be paid to the overseers of the poor of the city or town in which such offence shall happen, for the use of the poor thereof, and the other moiety to the person who shall sue for the same.

XVII. *And be it further enacted*, That all offences committed against any of the provisions of this act, shall be deemed and considered as misdemeanors, punishable by fine and imprisonment, or either of them, at the discretion of the court before which any conviction may be had.

Offences against this act punishable as misdemeanors.

XVIII. *And be it further enacted*, That whenever any suit shall be commenced and a recovery had for a penalty incurred by selling strong or spirituous liquors without licence, such recovery shall be a bar to all prosecutions for offences of the like nature committed before such recovery.

A recovery for a penalty incurred shall be a bar to any recovery for previous offences.
7 John. Rep. 134.

[FIFTH SECTION OBSOLETE.]

CHAP. XCVI.

An ACT to amend an Act to lay a duty on strong Liquors, and for regulating Inns and Taverns.

Passed April 2, 1806.

[W. v. 4. 442.]

BE it enacted by the people of the State of New-York, represented in Senate and Assembly, That it shall and may be lawful for the commissioners of excise of the town of Brooklyn, in the county of Kings, to license so many inns and taverns, in said town of Brooklyn, as they may deem necessary and proper, which shall not be obliged to provide and keep the spare bedding, stabling and provender, directed and required to be provided and kept by the ninth and tenth sections of the act hereby amended : *Provided*, that the same shall not exceed the number of six.

CHAP. CLXIX.

An ACT to prevent and avoid Alienations by Tenants for Life, and recoveries by Collusion.

Passed 7th April 1801.

[J.&V. v. 2. 98. 101.—Gr. v. 1. 392, 395.—K.&R. v. 1. 525.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That if any woman who bath or hereafter shall have any estate in dower or for term of life, jointly with her husband, or only to herself or to her use in any lands, tenements or hereditaments of the inheritance or purchase of her husband, or given to the said husband and his wife for term of life by any of the ancestors of the said husband, or by any other person seized to the use of the said husband or of his ancestors, and being sole, or with any subsequent husband or with any other person seized to their or either of their use of such estate, shall discontinue, alien, release or confirm, with or without warranty, or shall

Discontinuances and alienations by a woman of her dower or estate for life in lands of her husband with or without warranty, and recoveries of the same by covert to be void.
11 H. 7. c. 20
32 H. 8. c. 36
32 H. 8. c. 28
24 & 25 Car. 2 c. 24

34 & 35 H. 8
c. 30

And the person entitled to the inheritance may enter.

But the woman if she survives her husband may re-enter. And if she was sole at the time of such discontinuance, alienation or recovery then she shall be barred of her title. This act not to extend to any recovery, &c. had with the assent of the heir or reversioner.

Her conveyance, if sole, for the term of her life good.
3 Ed. 1 c. 7

No act of the husband only, touching the lands of the wife, to prejudice her or her heirs.
38 H. 8 c. 28

A woman may recover her lands lost by the default of her husband.
13 Ed. 1 c. 3
32 H. 8 c. 28
The heir, reversioner or remainder man may recover lands lost by the default of tenants in dower, by the curtesy or for life.
Upon the default of the husband, wife

suffer any recovery by covin against her or them, or any other seised to their use or to the use of either of them, all such recoveries, discontinuances, alienations, releases, confirmations and warranties shall be void; and if such woman be at the time married, then it shall be lawful for the person to whom the said lands, tenements or hereditaments ought to belong after the decease of the said woman, immediately to enter into the same, and them to possess during the life of the said husband, according to such title and interest as he would have had in the same if the same woman had been dead, and no discontinuance, warranty nor recovery had; but the said woman in such case, after the decease of the said husband, may re-enter into the same lands, tenements and hereditaments, and enjoy the same according to her first estate therein; but if the said woman, at the time of such discontinuance, alienation, recovery or warranty be sole, then she shall be barred of her title and interest in the same, and the person to whom the title, interest and possession of the same should belong after the decease of the said woman, shall immediately enter into the same lands, tenements and other hereditaments and possess and enjoy the same according to his title; *Provided always*, That this act shall not extend to any such recovery or discontinuance had with the heirs next inheritable to the said woman, or where he or they that next after the death of the same woman should have estate of inheritance in the same lands, tenements or hereditaments, be assenting to the said recovery, where the same assent be by deed or of record; *And provided also*, That it shall be lawful for every such woman, being sole or married, after the death of her first husband, to give, sell or make discontinuance of any such lands, tenements or hereditaments for term of her life only, after the course of the common law.

II. *And be it further enacted*, That no fine, feoffment or other act suffered or done by the husband only of any lands, tenements or hereditaments being the inheritance or freehold of his wife, during the coverture between them, shall prejudice the said wife or her heirs, or such as shall have right or interest to the same upon the death of such wife; but they may respectively enter into and enjoy the same, according to their rights and titles therein, as if no such act had been done or suffered.

III. *And be it further enacted*, That if the husband lose by default the land which was the right of the wife, the wife after the death of her husband may have a writ of right or an action of ejectment to recover the same, and the judgment by default shall be no bar to such action; and if any tenant in dower, tenant by the curtesy or other tenant for term of life or lives, who shall be impleaded, make default or give up the lands demanded, and judgment be given upon such default or surrender, the heirs or person to whom the reversion or remainder doth appertain after the death of such tenants, may have their action of ejectment to recover the same lands.

IV. *And be it further enacted*, That when any husband and wife shall be impleaded, if the husband absent himself and will

not defend his wife's right, or against his wife's consent will render the land, if the wife do come before judgment to defend her right, she shall be admitted without her husband.

to be received to defend her right.
13 Ed. 1 c. 3

V. *And be it further enacted*, That if any tenant in dower, tenant by the curtesy or other tenant for term of life or lives, be impleaded and the person to whom the reversion or remainder shall appertain, shall come into court and pray to be received to defend his right, at the day that the tenant pleadeth to the action or before, and before judgment, such person shall be received to defend his right and to plead to the action upon such terms as the court shall in its discretion deem just and equitable.

Reversioner to be received to defend his right.

22 & 23 Carl 2 c. 24
34 & 35 H. 8 c. 20.

VI. *And be it further enacted*, That if any tenant for term of life, tenant in dower or tenant by the curtesy, be impleaded and have judgment against him by default or otherwise, the person to whom the reversion or remainder of the tenements so lost shall appertain at the time of such judgment given, and his heirs, shall have a writ of error if error be found in the record of such judgment, as well in the life time of such tenant as after his death; and if such judgment be reversed the tenant who lost by the first judgment, if he or she shall be in life, shall be restored to the possession of the tenements so lost, with the issues in the mean time, and the party pursuing to the arrearages of rent if any be due for the same tenements; and if such tenant be dead at the time of the judgment given upon such writ of error, restitution shall be made to the party pursuing, with the issues after the death of the said tenant, together with the arrearages of rent, if any were due, in the life time of the said tenant: *Provided always*, That although the tenant who so lost by the first judgment be in life, if the party pursuing will allege that the same tenant assented by covin that such tenements should be lost, restitution of the same tenements shall be made to the party pursuing, with the issues and arrearages as aforesaid; but such tenant may have a writ of *scire facias* upon the same judgment so reversed or given on such writ of error if he or she will traverse the covin and assent aforesaid and not otherwise.

Where tenant in dower, by the curtesy or for life loses by default, that reversioner or remainder man may have writ of error.
9 Ed. 3 c. 3
And on reversal of judgment to tenant, if living, to be restored.

And if tenant be dead the party pursuing to have restitution.

And if tenant be living and assented to the first judgment by covin, the party pursuing also to have restitution.
Tenants may traverse the covin and assent.

VII. *And be it further enacted*, That if any person alien any tenement which he shall hold by the curtesy, his children shall not be barred by the deed of their father to demand and recover of the seisin of their mother, although the deed of their father mention that he and his heirs be bound to warranty, nor shall the issue of any such children be barred in such case; and the heirs of the wife shall not be barred of their action after the death of their father and mother, by the deed of their father, if they demand by action the inheritance of their mother which their father did alien in the life time of their mother.

Alienation by husband or tenant by the curtesy not to bar the issue of the inheritance of the mother.

6 Ed. 1 st. 1 c. 3

VIII. *And be it further enacted*, That the suit of the wife or her heirs, after the death of her husband, for lands aliened by the husband, shall not be delayed by the non-age of the heirs who ought to warrant; but every purchaser shall be delayed until the full age of his warrantor to have his warranty.

No suit of the woman or her heirs for lands aliened by the husband to be delayed by non-age.

6 Ed. 1 c. 3
13 Ed. 1 st. 1 c. 40

IX. *And be it further enacted*, That all recoveries had or prosecuted by agreement of the parties or by covin, against any ten-

All recoveries against tenant

the life, &c. by
covenant to be
void against
the reversion-
er or remain-
der man.
38 H. 8 c. 31
14 Ed. 2 c. 8
But this act
not to prej-
udice any bona
fide recovery
by good title.

Nor recoveries
by assent of
the reversion-
er or remain-
der man.

Lessee for
years may
falsify recov-
eries for his
term.

6 Ed. 1 c. 11
21 H. 8 c. 15

And the recov-
erer to have
like remedy
for rents and
waste as if no
recovery was
had.

No execution
to be avoided
by a feigned
recovery.
31 H. 8 c. 15
§ 4

ant seised of any life estate, of any lands, tenements or hereditaments, or against any other with voucher over of any such particular tenant, or of any having right or title thereto, shall as against such persons to whom any reversion or remainder thereof may appertain, and against their heirs be void : *Provided always*, That nothing herein contained shall extend to or prejudice any person who shall recover any lands, tenements or hereditaments without fraud or covin, by reason of any former right or title ; but every such recovery shall be of like force and effect, as if this act had not been made : *Provided also*, That every such recovery by the assent of any person to whom any reversion or remainder thereof shall appertain, if the same assent do appear of record in the court where such recovery shall be had, shall be of like force and effect against such person and his heirs, as if this act had not been made.

X. *And be it further enacted*, That every lessee for years may falsify, for his term only, recoveries in such wise and form as a tenant of the freehold may do by the course of the common law, where such tenant of the freehold was neither privy nor party to the same recovery ; and such lessees, their executors, administrators and assigns, notwithstanding such recoveries, shall hold their said terms, according to their leases, against all such recoverers, their heirs and assigns, as they might have done against the said lessors, if such recovery had not been had nor suffered ; and the said recoverers, their heirs and assigns, after such recovery had, shall have the like remedy against the said lessees, their executors, administrators and assigns for the rents and services reserved upon the same leases, coming due after the same recoveries ; and also like actions against them for waste done, after the same recoveries, as the said lessors might have had if the same recoveries had never been had ; and no execution shall be avoided by means of any such feigned recovery, but all persons entitled to have execution of any lands, tenements or hereditaments shall have like means to avoid and falsify the same recoveries as is provided for the lessees for term of years.

CHAP. CLXXXIII.

An ACT for the Limitation of Criminal Prosecutions and of Actions at Law.

Passed 8th April, 1801.

[V.S. v. 1. 82.—Ibid v. 2. 769, 772.—J.&V. v. 2. 260.—Gr. v. 2. 93.
328.—K.&R. v. 1. 562.]

No suit to be
brought by
the people of
this state for
lands lost
within forty
years after
their title ac-
quired.

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the people of this state will not sue or implead any person, body politic or corporate, for or in respect to any lands, tenements or hereditaments, other than liberties or franchises, or the issues or profits thereof, by reason of any right or title of the said people to the same, which shall not have accrued within the space of forty years before any suit

or other proceeding for the same be commenced, unless the said people or those under whom they claim, shall have received the rents and profits thereof, or of some part thereof, within the said space of forty years; and in every case where such title shall not have accrued within the time aforesaid, unless such rents and profits shall have been received as aforesaid, the person, body politic or corporate holding such lands, tenements or hereditaments, other than liberties or franchises, shall freely hold and enjoy the same against the said people, and also against all persons claiming by or under them, except such persons shall claim by virtue of any letters patent or grants from the said people made upon suggestion of concealment or wrongful detaining, or defective title, upon which a verdict, judgment or decree in some court of record in this state shall have been given for such lands, tenements or hereditaments in favor of the said people, or of such patentee or grantee, his or their heirs or assigns, within the said space of forty years before commencing any suit or other proceeding for the same.

II. *And be it further enacted*, That no action for the recovery of any lands, tenements or hereditaments shall hereafter be maintained, nor any avowry or cognizance be made, unless on a seisin or possession of the hereditaments, either of the plaintiff or person making avowry or cognizance, or of the ancestor or predecessor of such plaintiff or person making avowry or cognizance, within twenty-five years next before such action brought or avowry or cognizance made: *Provided always*, That no part of the time during which the plaintiff or person making avowry or cognizance shall have been within the age of twenty-one years, insane, *feme covert* or imprisoned, shall be taken as a part of the said limitation of twenty-five years; and if any such action be brought or avowry or cognizance made and such seisin or possession be not proved by the plaintiff in such action or person making such avowry or cognizance, such plaintiff and such person making such avowry or cognizance, and their heirs and successors respectively, shall for ever thereafter be barred from bringing such action or making such avowry or cognizance.

III. *And be it further enacted*, That all writs of *scire facias* upon fines of any manors, lands, tenements or hereditaments hereafter to be brought, shall be sued and taken within twenty years next after the title and cause of action first descended or fallen and not after; and no person shall at any time hereafter make any entry into any manors, lands, tenements or hereditaments but within twenty years next after his right or title descended or accrued to the same, and in default thereof such person so not entering and his heirs shall thereafter be barred from making such entry: *And further*, That no claim or entry of or upon any manors, lands, tenements or hereditaments shall be a sufficient entry or claim within the meaning of this act, unless an action shall be commenced thereupon within one year next after the making of such entry or claim, and prosecuted with effect: *Provided*, That if any person entitled to any such writ of *scire facias*, or to make such entry, be at the time such right or title first descended or accrued within the age of twenty-one years, *feme covert*, insane or im-

No action for the recovery of lands, &c. shall be maintained by any other, nor avowry made, but on a seisin within twenty-five years, saving to infants, &c.

St. Merton: 30 H. 3 c. 8
St. Westm. 1 3 Ed. 1 c. 39
33 H. 8 c. 3
21 Jac. 1 c. 10

6 John. Rep. 16, 290.

Writs of *scire facias* upon fines to be brought within twenty years.

No entry to be made into lands but within twenty years.
10 W. 3 c. 14
21 Jac. 1 c. 10
No entry or claim to be good unless suit brought within one year.

Proviso in favor of infants, &c.

prisoned, such person and his heirs, shall or may after the said twenty years be expired, bring such action or make such entry as he or they might have done before the expiration of the said twenty years, so as such person within ten years after such disability removed, or the heir or heirs of such person within ten years after his death, sue forth such writ or make such entry, and at no time after ten years as aforesaid.

4 John. Rep.
390

The dying
seised of a dis-
seisor not to
gill an entry
unless such
disseisor had
peaceable pos-
session for five
years.
4 John. Rep.
390

IV. *And be it further enacted*, That any disseisor dying seised of any lands, tenements or hereditaments, having no right or title therein, shall not be taken or deemed any such descent in the law as to toll or take away the entry of any person or his heirs, who at the time of such descent shall have lawful right of entry therein, unless such disseisor shall have had the peaceable possession of the lands, tenements or hereditaments whereof he shall so die seised for the space of five years next after the disseisin by him committed, without entry or continual claim by or of the person or persons having lawful title thereto.

Limitation of
personal ac-
tions.
21 Jac. 1 c. 16
§ 3
2 John. Rep.
200
1 John. Rep.
165
1 John. ca. 76
3 John. Rep.
273, 523
4 John. Rep.
461
6 John. Rep.
112, 267
8 John. Rep.
467
9 John. Rep.
181
 proviso that
on reversal or
arrest of judg-
ment plaintiff
may bring a
new suit with-
in one year.
21 Jac. 1 c. 16
§ 4

V. *And be it further enacted*, That all actions upon the case and of account, other than actions for slander and actions which concern the trade of merchandize between merchant and merchant, their factors or servants, and all actions of debt for arrears of rent, or founded upon any contract without specialty, and all actions of trespass, detinue and replevin for goods or chattels, and actions of trespass *quare clausum fregit*, shall be commenced and sued within six years next after the cause of such actions accrued, and not after; and all actions for assault, battery, wounding and imprisonment, or any of them, shall be commenced and sued within four years next after the cause of such actions accrued, and not after; and all actions on the case for words within two years after the words spoken; and not after; *Provided however*, That if in any of the said actions judgment shall be given for the plaintiff, and the same be reversed by error, or if a verdict pass for the plaintiff and upon matter alleged in arrest of judgment the judgment be given against the plaintiff that he take nothing by his plaint, writ or bill, or if any of the said actions shall be brought by original and the defendant therein be outlawed and shall after reverse the outlawry, in all such cases the party plaintiff, his heirs, executors or administrators, as the case shall require, may commence a new action from time to time within one year next after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not after: *And provided also*, That if any person entitled to any of the said actions, shall at the time of the cause of action accrued be within the age of twenty-one years, *some covert*, insane or imprisoned, such person shall be at liberty to bring the said actions within the respective times above limited after such disability removed; and if any person against whom any cause of any such action shall accrue, shall be out of this state at the time the same shall accrue, the person who shall be entitled to such action shall be at liberty to bring the same within the times respectively above limited after the return of the person so absent into this state.

Further pro-
viso in favor
of infants, &c.

4 R. 5 Ann. c.
16, § 19

Limitation of
actions and.

VI. *And be it further enacted*, That all actions, informations

and indictments which at any time hereafter shall be brought, sued or exhibited for any forfeiture upon any penal statute, made or to be made, whereby the forfeiture is or shall be limited to the people of this state only, shall be brought, sued or exhibited within two years next after the offence committed or to be committed against such penal act, and not after; and that all actions or informations which shall at any time hereafter be brought, sued or exhibited for any forfeiture upon any penal statute, made or to be made, the benefit and suit whereof is or shall be by the said statute limited or given to any person who shall prosecute for the same, or to the people of this state and to any other who shall prosecute in that behalf, shall be brought, sued or exhibited by any person who may lawfully pursue for the same, within one year next after the offence committed or to be committed against the said statute; and in default of such pursuit that then the same shall be sued, brought or exhibited for the people of this state at any time within two years after that year ended; and that all actions or informations which shall at any time hereafter be brought, sued or exhibited for any forfeiture or cause upon any statute, made or to be made, the benefit and suit whereof is or shall be given or limited to the party aggrieved, shall be brought, sued or exhibited within the space of three years next after the offence committed or to be committed, or cause of action accrued, and not after; and if any action, information or indictment for any offence against any statute, made or to be made, shall be brought after the time in that behalf above limited, the same shall be void: *Provided always*, That where any action, information, indictment or other suit is or shall be limited by any statute to be sued, brought or exhibited within a shorter time than is hereby limited, then the same shall be brought within the time limited by such statute.

informations on penal statutes.
§1 El c. 5 § 6

Proviso as to shorter limitations by other statutes.

VII. *And be it further enacted*, That all suits, Informations and indictments which shall hereafter be brought or exhibited for any crime or misdemeanor, murder excepted, shall be brought or exhibited within three years next after the offence shall have been committed, and not after, and if brought or exhibited after the time hereby limited the same shall be void: *Provided however*, That if the person, against whom such suit, information or indictment shall be brought or exhibited, shall not have been an inhabitant or usually resident within this state during the said three years, then the same shall or may be brought or exhibited against such person at any time within three years, during which he shall be an inhabitant or usually resident within this state, after the offence committed: *And provided also*, That where any suit, information or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within a shorter time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute.

Limitation of criminal prosecutions.
7 W. 3 c. 3

Proviso as to non-resident offenders.

Further proviso as to shorter limitations by other statutes.

VIII. *And be it further enacted*, That no part of the time from the fourteenth day of October, in the year one thousand seven hundred and seventy-five, to the twenty-first day of March, one thousand seven hundred and eighty-three, shall be deemed or adjudged as part of the respective periods herein before limit-

A certain period not to be computed as part of the periods of limitation.

ed for making any title, prescription, cognizance or claim, or bringing any action or suit whatsoever.

Cessions of Lands, &c. to the United States.

It has been thought proper to publish together, all the acts ceding lands &c. to the United States.

SIXTEENTH SESSION.

CHAP. IV.

An Act to cede the Jurisdiction of certain Lands on Montock-Point, to the United States of America, for the purposes therein mentioned.

Passed 18th December, 1792.

Recital

WHEREAS by an act of the congress of the United States of America, entitled *An Act to erect a light-house on Montock-Point, in the State of New-York*, passed the 12th day of April, 1792, it is enacted and declared, That as soon as the jurisdiction of such land on Montock-Point, in the state of New-York, as the President of the United States, shall deem sufficient and most proper for the convenience and accommodation of a light-house, shall have been ceded to the United States, a light-house may be erected thereon. And whereas, it is meet and proper that such cession should be made under certain limitations; Therefore,

Jurisdiction of Montock-Point ceded to the United States.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the jurisdiction in and over all that certain tract of land at Montock-Point, in the county of Suffolk, within this state, and herein after particularly described, shall be, and hereby is ceded to the United States of America, for the purposes aforesaid; *Provided nevertheless*, that such jurisdiction so ceded as aforesaid, shall not extend, or be construed to extend, so as to impede or prevent the execution of any process at law under the authority of this state, except so far forth, as such process may affect any the real or personal property of the United States, within the said tract, and that all the lands and tenements within the said tract, shall be, and forever hereafter are exonerated and discharged from any taxes which may be laid under the authority of the legislature of this state, and the tract of land above mentioned, in and over which the jurisdiction is so ceded as aforesaid, is more particularly known by the name of Turtle-Hill, and is butted and bounded as follows, to wit: Beginning at the beach and at a rock laying on a hommock at the bottom of the said hill, and runs thence north, eighty-two degrees west, eleven chains and fifty-eight links; thence south five degrees west, five chains; thence south fifteen degrees east, nine chains, to a rock marked *John Champlain*, 1788; thence on the same

Proviso

Boundaries defined.

course to low water mark ; thence northeasterly along low water mark, until the point of beginning bears north, eighty-two degrees west ; thence to the place of beginning.

TWENTY-FIRST SESSION.

CHAP. CXII.

An ACT to cede the Jurisdiction of certain Lands in this State to the United States.

Passed April 6th, 1793.

WHEREAS the congress of the United States have passed a law authorising the erection of a light-house on Eaton's Neck, near Huntington Bay, on Long-Island, on condition of a cession on the part of this state to the United States of the jurisdiction of such tract as may be deemed sufficient and proper for that purpose by the president of the United States: Therefore,

1. *BE it enacted by the people of the State of New York, represented in Senate and Assembly,* That as soon as the president of the United States shall cause a certificate under his hand and seal to be filed in the office of the secretary of this state, describing the situation and quantity of land he may have chosen for the purpose aforesaid, not exceeding ten acres, and certifying that the same are purchased of the present proprietor thereof, the jurisdiction of the said lands so described shall thereupon be vested in the United States: *Provided nevertheless,* that such cession shall not be construed to extend to prevent the execution of any process civil or criminal, issuing under the authority of this state ; and the lands so described and ceded shall be, and hereby are, forever hereafter exonerated and discharged from any taxes to be laid under the authority of this state.

Preamble reciting an act of congress.

Jurisdiction of certain lands on Eaton's Neck, when and how to be vested in the United States.

Lands ceded exempted from state taxes.

[THE SECOND AND THIRD SECTIONS OBSOLETE.]

TWENTY-THIRD SESSION.

CHAP. VI.

An ACT to cede to the United States the Jurisdiction of certain Islands situate in and about the harbor of New-York.

Passed 15th February, 1800.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the following islands, in and about the harbor of New-York, and in and about the fortifying of which this state hath heretofore expended or caused to be expended large sums of money, to wit: All that certain island called Bedlow's island, bounded on all sides by the waters of the Hudson river; all that certain island called Oyster island, bounded on all sides by the waters of the Hudson river, and all that certain island called Governor's island, on which Fort Jay is sit-

Certain islands in and about the harbor of New-York, made subject to the jurisdiction of the United States.

uale, bounded on all sides by the waters of the East river and Hudson river, shall hereafter be subject to the jurisdiction of the United States. *Provided*, That this cession shall not extend to prevent the execution of any process, civil or criminal, issuing under the authority of this state, but that such process may be served and executed on the said islands respectively, any thing herein contained notwithstanding.

CHAP. LXXVI.

An ACT to vest in the United States the Title to certain Lands on Staten Island.

Passed 1st April, 1800.

WHEREAS in and by the act of the legislature of this state, entitled *An Act to provide against infectious and pestilential diseases*, passed February the 25th, 1799, provision is made to vest in this state the fee simple of a tract of land, not exceeding thirty acres, on the easterly part of Staten island. *And whereas* the United States have laid out and expended a large sum of money in making improvements on the said tract for the purpose of facilitating commerce, and collecting duties in the port of New-York, and are desirous of expending more money for the same purpose ; Therefore,

BE it enacted by the People of the State of New-York represented in Senate and Assembly, That the governor of this state for the time being, (as soon as this state shall become vested with title to the said tract in pursuance of the said act) shall be and hereby is authorised to grant to the United States the fee simple of such part of the said tract, not exceeding five acres, on which the said improvements have been made, together with so much land under the water contiguous thereto, as to him may appear necessary for the purpose aforesaid, for such sum or consideration as the state shall pay for the same ; *Provided*, That such grant shall expressly reserve the jurisdiction of this state.

Certain islands in and about the harbor of New-York, made subject to the jurisdiction of the United States.

TWENTY-SIXTH SESSION.

CHAP. LIV.

An ACT to cede the Jurisdiction of Great-Gull Island and Little-Gull Island to the United States of America, for the Purposes therein mentioned.

Passed March 26th, 1803.

WHEREAS the United States have purchased the islands herein after mentioned, for the purpose of erecting a light-house on one of them : *And whereas*, It is meet and proper that the jurisdiction of this state in and over the said islands, should be made to the United States, under certain limitations for the purpose aforesaid : Therefore,

BE it enacted by the people of the State of New-York, represented in Senate and Assembly, That the jurisdiction in and over all those two certain islands, situate in the county of Suffolk, commonly known by the names of Great-Gull island and Little-Gull island, bounded on all sides by the waters of the East river, shall be and hereby is ceded to the United States of America: Provided nevertheless, That such jurisdiction so ceded as aforesaid, shall not extend or be construed to extend so as to impede or prevent the execution of any process, civil or criminal, under the authority of this state, except so far forth as such process may affect any the real or personal property of the United States within the said islands.

TWENTY-NINTH SESSION.

CHAP. VI.

An ACT to cede the Jurisdiction of certain Lands in this State to the United States.

Passed February 17, 1806.

WHEREAS the congress of the United States have passed a law authorising the erection of a light-house on Sand's or Watch-point, in the town of North-Hempsted, on Long-Island, on condition of a cession on the part of this state, to the United States, of the jurisdiction of sufficient land for that purpose: *And whereas* the government of the United States have also proposed to erect a beacon on the southeast part of Staten-Island, on the like condition—Therefore,

Preamble.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That as soon as the secretary of the treasury of the United States, shall cause certificates under his hand and seal to be filed in the office of the secretary of this state, describing the situation and quantity of land he may have chosen for the purposes aforesaid, at the places aforesaid, not exceeding five acres at Watch-Point, and not exceeding one acre on Staten-Island, and certifying that the same are purchased of the proprietors thereof or of the state, as hereafter provided for, as the case may be, the jurisdiction of the said lands so described, shall thereafter be vested in the United States: Provided nevertheless, That such cession shall not be construed to extend to prevent the execution of any process, civil or criminal, issuing under the authority of this state.*

Land at Watch-Point and on Staten-Island ceded.

Proviso.

II. *And be it further enacted, That it shall and may be lawful for the surveyor-general, to sell to the United States, so much of the land of this state on Staten-Island, as may be deemed necessary for the purpose aforesaid, not exceeding one acre, and to convey the same in fee-simple.*

Surveyor-general may sell &c.

CHAP. LI.

An ACT to cede the Jurisdiction of certain Lands in this State to the United States.

Passed March 20, 1807.

Commissioners, authorised to cede the jurisdiction of certain lands, on Staten and Long-Islands, to the United States.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the person administering the government of this state, the lieutenant-governor, the chancellor, the chief justice of the supreme court, and the mayor of the city of New-York, for the time being, be and hereby are appointed commissioners, with full powers to them or any three of them, whereof the person administering the government, for the time being, shall always be one, in their discretion, as they shall judge the safety and defence of the city and port of New-York to require, and in such manner and form as they shall judge necessary and proper, to declare the consent of the legislature of this state, that such parcels of land on Staten-Island and on Long-Island, as they shall judge necessary for the purposes aforesaid, shall be subject to the jurisdiction of the United States, and thereupon the jurisdiction of the said lands shall be vested in the United States: *Provided however,* That such cession shall not exceed two hundred acres on both of the said Islands: *And provided further,* That such cession shall not be deemed to extend to prevent the execution of any process, civil or criminal, under the authority of this state.

proviso.

Lands to be ceded to be described by metes and bounds.

II. *And be it further enacted,* That such declaration of the consent of the legislature of this state shall explicitly define, by accurate metes and bounds, the situation of the lands, the jurisdiction whereof shall be ceded in virtue of this act, which description shall be filed in the secretary's office of this state.

Lands at Bluff-Point, on Staten-Island, granted to the United States.

III. *And be it further enacted,* That the lands belonging to the people of this state at Bluff-point, on Staten-Island, which shall by the president of the United States be deemed necessary for fortifications, are hereby granted to the United States for that purpose.

THIRTY-FIRST SESSION.

CHAP. LI.

An ACT supplementary to an Act, entitled, "An Act to cede the jurisdiction of certain lands in this State to the United States," passed 20th March, 1807.

Passed March 18, 1808.

Commissioners appointed under a former law, their powers extended.

I. *BE it enacted by the People of the state of New-York, represented in Senate and Assembly,* That the powers vested in the commissioners constituted by the act to which this is supplementary, shall be and hereby are extended to lands covered with

water between Long and Staten Islands, and below the south bounds of the city and county of New-York, and also to lands in the city and county of New-York, and to lands covered with water in the said city and county : *Provided*, That cessions shall be made only of such lands as in the opinion of such commissioners shall be necessary for the defence and safety of the said city and port of New-York.

II. *And be it further enacted*, That the first proviso of the first section of the act to which this is supplementary, shall be and the same is hereby repealed.

Proviso in a certain act repealed.

III. *And be it further enacted*, That the declaration of the consent of the legislature of this state shall describe as accurately as may be, by metes and bounds, or otherwise, the situation of the lands, the jurisdiction whereof shall be ceded in virtue of this act, which description shall be filed in the secretary's office of this state, and such declaration may in addition to the restrictions and limitations prescribed by this act, and the act to which this is supplementary, contain such other qualifications and limitations as the said commissioners may deem expedient.

Lands to be ceded to the U. States, description of to be filed in secretary's office.

IV. *And be it further enacted*, That the said commissioners are hereby authorised and empowered to grant to the United States, for the purpose of providing for the defence and safety of the city and port aforesaid, the use of any of the lands and waters belonging to the people of this state in the said city and county of New-York, and also of the lands covered with water between Long and Staten-Islands, and below the south bounds of the city and county of New-York ; which lands shall be granted on the express condition of their reverting to the people of this state in case they are not applied to the purposes aforesaid.

Lands which the commissioners are authorised to grant.

V. *And be it further enacted*, That it shall be lawful for the person administering the government of this state to enter into and upon the lands called Ellis or Oyster-island, and to lay out and survey the same ; and having made such survey, to contract and agree with the owner or owners of the said island for the whole or so much of the same, and for any tenements thereon being, as the president of the United States shall judge requisite for fortifications, and to purchase the same in the name and behalf of the people of this state ; but if he cannot agree with the owner or owners thereof respectively, or in case the owner or owners thereof shall be under age, non compos mentis, or out of the state, then it shall be lawful for the person administering the government of this state, to apply to the chancellor of this state, who, upon such application, is hereby required to issue a writ or writs in nature of a writ ad quod damnum, to be directed to the sheriff of the city and county of New-York, commanding him, that, by the oaths of twelve good and lawful men of his bailiwick, he shall inquire whether the person or persons owning any of the said lands and tenements, so to be applied to such fortifications, will suffer and sustain any and what damages by reason of taking the same for such purpose, and to return the same writ together with the finding of the said jury, to the court of chancery of this state, without delay ; and upon such writ

Ellis's Island; governor authorised to purchase lands on.

How to proceed where owners are under age, &c

being delivered to the sheriff, he shall give at least fourteen days notice of the time of executing the same, by a publication in two of the public newspapers printed in the city of New-York; and shall cause to come upon or within the premises, at the time appointed, twelve good and lawful men of his bailiwick, as aforesaid, to whom he shall administer an oath that they will diligently inquire concerning the matters and things in the said writ specified, and a true verdict give according to the best of their skill and judgment, without favor or partiality; and thereupon the said sheriff and inquest shall proceed to view all and every the said lands and tenements in such writ specified, and having considered the value of the same as shall be necessary to be vested in the people of this state for the purposes aforesaid, they shall cause the same to be described, and shall value and appraise the same and the damage which the owner or owners thereof shall sustain in consequence of being deprived thereof, and shall define and ascertain the amount of such value and damage; and the said sheriff and jury shall make an inquisition under their hands and seals, setting forth the matter above required, and the sheriff shall forthwith return the same together with the said writ, to the said court of chancery, and thereupon the chancellor shall examine the same, and if the writ shall appear to have been duly executed, then he shall enter judgment, that the people of this state (the person administering the government first causing to be paid into the said court the sum or sums of money assessed in said inquisition, over and besides the costs) shall be entitled to have and to hold all and every the said lands and tenements, together with the rights and appurtenances as in the said inquisition described, as fully and effectually as if the same had been granted by the owner or owners thereof; and if the return so made shall be defective, the chancellor shall specify the same, and shall direct a new inquisition to be taken, to supply such defect or defects; and upon the title to the said lands and tenements being vested in the people of this state, as aforesaid, the person administering the government of this state is hereby required and empowered to convey and grant all the right, title, and interest of this state to the United States, for the purposes in this act expressed: *Provided*, That the sum or sums so assessed, and the costs, are paid to the order of the person administering the government of this state, by and on behalf of the United States.

Lands necessary for the protection of New-York, provisions of this act extended to.

VI. *And be it further enacted*, That all the provisions in the last preceding section contained, are hereby extended to such lands on Long and Staten-Island, and the Island of New-York, as may be required by the President of the United States, for the purpose of providing for the defence and safety of the city and port of New-York.

CHAP. XCIII.

An ACT to facilitate the Purchase of Lands for the Erection of a Light-House at North-Hempsted.

Passed April 1, 1808.

WHEREAS the Congress of the United States, have passed a law authorising the erection of a light-house on Sands' or Watch-Point, in the town of North-Hempsted in Queens county; and whereas difficulties have occurred in purchasing the land required for that purpose; Therefore,

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That it shall be lawful for the person administering the government of this state, to enter in and upon any of the lands situate as aforesaid, and to cause the same to be surveyed, and to contract and agree with the owner or owners thereof for so much of the same, not exceeding five acres, as the secretary of the treasury of the United States may require, for the purpose aforesaid, and to purchase the same, in the name and behalf of the people of this state; but if he cannot agree with the owner or owners thereof respectively, or in case the owner or owners thereof shall be under age, non compos mentis, or out of the state, then it shall be lawful for him to apply to the chancellor, who is hereby required on such application, to issue a writ or writs, in nature of a writ ad quod damnum, directed to the sheriff of the county of Queens, commanding him, that by the oaths of twelve good and lawful men of his bailiwick, he shall inquire whether the person or persons, owning any of the said lands so to be applied, will suffer and sustain any and what damage, by reason of the taking the same for such purpose, and to return the same writ, together with the finding of the said jury, to the court of chancery of this state, without delay; and all the proceedings in relation to the said writ, shall be conformable, as nearly as may be, to the directions contained in an act passed the present session, entitled "an act supplementary to an act, entitled "an act to cede the jurisdiction of certain lands in this state to the United States;" and upon the title to the said lands being vested in the people of this state, the person administering the government of this state, is hereby required and empowered to convey and grant the same to the United States: *Provided,* That the consideration money and the costs are paid to him, by and on behalf of the United States.

II. *And be it further enacted,* That as soon as the person administering the government of this state, shall cause a certificate, under his hand and seal, to be filed in the office of the secretary of this state, describing the situation and quantity of land procured in either of the modes above mentioned, for the purpose aforesaid, and not exceeding five acres, and certifying that the title of the same is vested in the United States, then the jurisdiction of the said land so described, shall from that time be vested in the United States: *Provided nevertheless,* That such cession shall not be construed to prevent the execution of any process, civil or criminal, issuing under the authority of this state.

LAWS OF NEW-YORK,
THIRTY-FOURTH SESSION.
CHAP. XCIII.

An ACT authorising a cession to the United States of the title and jurisdiction of this state to the lands therein mentioned.

Passed March 30, 1811.

WHEREAS it appears from a communication of his excellency the governor, that the removal of the military academy from its present situation is contemplated by the government of the United States, and that it is probable that Staten-Island will be chosen for the future site thereof, provided the United States shall be vested with the property and jurisdiction of a tract of land suitable to that purpose : Therefore,

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the governor, lieutenant-governor, chancellor and chief justice of this state, and the mayor of the city of New-York, or any three or more of them, be and they are hereby authorised and required to cede to the United States the title and jurisdiction of this state to all the lands belonging to said state, situate on or near the south-easterly point of Staten-Island, containing about fifty acres, together with the fortifications thereon, to be held by the said United States as long as the principal military academy of said United States shall be established, suitably endowed, and continued on said Island, upon such terms and conditions as may be concluded on and settled between them the said governor, lieutenant-governor, chancellor and chief justice of this state, and the mayor of the city of New-York, or any three or more of them, and the person or persons duly authorised and empowered by the government of said United States to accept such cession : *Provided,* That such act of cession shall not at any time hereafter be construed or deemed to abridge or restrain the right of this state to execute the civil and criminal process of its courts, both of law and equity, at all times within the lands and fortifications so ceded, in as full sovereignty as of right it now may do.

CHAP. CXXXVIII.

An ACT to cede the jurisdiction of certain lands on Lake Erie to the United States, for the purposes therein mentioned.

Passed April 4th, 1811.

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the jurisdiction in and over all such certain tract of land in the town of Buffalo, in the county of Niagara, within this state, as shall or may be granted or conveyed by the Holland company, or their duly authorised agent, to the government of the United States, shall be and hereby is ceded to the United States of America for the purpose of erecting a light-house thereon : *Provided always,* That such tract of land

shall not exceed one acre : *And provided further*, That such cession shall not impede or prevent the execution of any process at law under the authority of this state, except against the real or personal property of the government of the United States.

II. *And be it further enacted*, That the property so ceded shall be and hereafter is exonerated and discharged from any taxes which may be laid or imposed under the authority of the government of this state, while said land shall remain the property of the government of the United States, and while the same shall be appropriated to the purpose intended by this act, and not otherwise.

TWENTY-FIFTH SESSION.

CHAP. XLVII.

An ACT for holding a Treaty with the Seneca Nation of Indians, establishing a Military Post near Lake-Erie, and for other purposes.

Passed March 19th, 1802.

II. *And be it further enacted*, That it shall and may be lawful for the person administering the government of this state, for and on behalf of this state, to convey to the United States, after the extinguishment of the claim of the said Indians as aforesaid in fee simple, such part of the said land, at the eastern extremity of Lake-Erie, at a place called Black-Rock, as may be sufficient for the establishment of a military post, the United States paying therefor, the expence of holding the said treaty, or such part thereof as the person administering the government of this state shall judge reasonable ; *Provided always*, That nothing in the foregoing grant to the United States shall be construed so as to prejudice the right of portage of the people of this state along the said river through the tract of land which may be so conveyed, and the privilege of a road along the shore of Lake-Erie, and of a ferry across the Niagara-river at Black-Rock ; *And provided further*, That such conveyance shall in no wise prevent the execution of any process, civil or criminal, issuing under the authority of this state within the bounds of the land so to be conveyed, and such conveyance shall expressly contain such condition.

Lands, for a Military Post, to be conveyed to the United States.

Such conveyance, not to prejudice certain rights and privileges.

TWENTY-SIXTH SESSION.

CHAP. CVI.

An ACT for the Sale of the unappropriated Lands, and for other Purposes.

Passed April 6th, 1803.

XIII. *And be it further enacted*, That his excellency the governor be and he is hereby empowered to agree with such person or persons as shall be authorised by the United States for that purpose, for the sale of such quantity of the lands adjoining the Fort Niagara, as shall be necessary for the accommodation of that post, and to cede the right of the people of this state to the said lands to the United States.

Governor authorised to cede to the United States lands at Niagara.

The connexion the following act has with the foregoing induced its publication in this place.

THIRTY-SIXTH SESSION.

CHAP. CCIV.

An ACT concerning the execution of Writs ad quod damnum.

Passed April 13, 1813.

Ed. 1. st. 2.
§ 10. W. 3.
c. 16. § 6.

Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That in all cases in which a writ ad quod damnum is to be executed to ascertain the damages of any person whose lands may be taken for the use of the United States, it shall be lawful for the chancellor, when in his opinion a fair and impartial assessment cannot be had by a jury of the county in which the lands are situate, to order a struck or foreign jury for the execution of such writ.

Act relative to the cession to Massachusetts, &c.

CHAP. CLXXX.

An ACT concerning the Lands ceded by this State to the Commonwealth of Massachusetts.

Passed April 9, 1813.

Map made by
W. Sabin con-
firmed.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the survey made by Walter Sabin, of the western lands ceded by this state to the commonwealth of Massachusetts, as delineated on a map thereof filed in the office of the secretary of this state, except the north tier of lots, containing eight thousand four hundred acres, be and the same is hereby confirmed.

Occupants to
have certain
privileges.

II. *And be it further enacted,* That the present occupants of part of the said north tier of lots shall have the exclusive privilege of purchasing that portion thereof which they respectively possess, together with the land adjoining, in the whole not exceeding one lot of one hundred and sixty acres to each occupant, at such price as the surveyor-general shall direct, on a fair valuation of each lot, exclusive of the improvements thereon, to be paid in instalments as are provided by the act entitled "An act concerning the commissioners of the land-office and the sale of the unappropriated lands."

Privileges of
the original
proprietors.

III. *And be it further enacted,* That the original proprietors, or their legal representatives, of persons claiming said land under a grant from the state of Massachusetts to Samuel Brown and others, shall have the privilege to purchase the residue of said land at the price ascertained as aforesaid.

Lands to be
sold at ven-
due unless ap-
plied for be-

IV. *And be it further enacted,* That in case neither the claimants as aforesaid, nor those in actual possession shall by the first day of November next purchase the same, or such parts as they

or either of them are entitled to purchase by virtue of this act, on the terms and in the manner above mentioned, it shall be the duty of the surveyor-general to sell the same or such parts thereof as are not purchased as aforesaid, at public auction, giving notice thereof in like manner as is directed in the act aforesaid.

for the 1st of November.

Grant by the State to the City of New-York for public purposes, &c.

THIRTEENTH SESSION.

CHAP. XXV.

An ACT for securing and improving certain Lands in the City of New-York, for Public uses, and for other purposes therein mentioned.

Passed 16th March, 1790.

WHEREAS Fort George, in the city of New-York, and the battery adjacent thereto, are at present useless for the purpose of defence : Therefore,

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That all that part of Fort George, in the city of New-York, and the lands adjoining thereunto, belonging to the people of this state ; beginning at a stake standing on the easterly side of the Broadway continued, at a place which is eighty-six feet distant, on a course south, thirty-seven degrees and forty-five minutes east, from the south-east corner of the dwelling-house of captain Archibald Kennedy, and running thence easterly, to the north-east corner of the old secretary's office, on Whitehall-street, thence southerly, along the west side of Whitehall-street to the ground of captain Thomas Randall ; then westerly along the north side of his ground, and along the rear of the lots which front on Pearl-street, as far as they extend ; then north, fifty-seven degrees and forty-five minutes west, until a course north, thirty-two degrees and fifteen minutes east, will strike the place of beginning, and then north, thirty-two degrees and fifteen minutes east, to the place of beginning, shall be, and hereby are declared to be for ever reserved for the purpose of erecting public buildings, and such works of defence as the legislature shall from time to time direct ; *And further,* That the same shall not at any time or times hereafter, be sold or appropriated to, or for any private use or purpose whatever.

Part of Fort George reserved for public buildings.

II. *And be it further enacted by the authority aforesaid,* That all the lands belonging to the people of this state, within the bounds following, to wit : Beginning at the north-east corner of the old secretary's office, and running thence southerly along Whitehall-street to the East-river at Whitehall-slip, then southerly, westerly and northerly, along the East-river, the bay and Hudson's river, to the north side of the street which runs on the south side

Other lands adjacent thereto, vested in the corporation of New-York, for public buildings and works of defence.

of Archibald Kennedy's house, continued to Hudson's river; thence along the same to the south-east corner of the said Kennedy's house; thence south, thirty-seven degrees and forty-five minutes east, eighty-six feet, thence easterly to the place of beginning (excepting thereout, that part reserved to the people of this state, as described in the preceding section of this act) as well as all the lands within the bounds and limits aforesaid, which the said corporation of the city of New-York claim title to, shall be, and the same are hereby vested in the mayor, aldermen and commonalty of the city of New-York, to remain for the purpose of erecting public buildings, and works of defence thereon; but without any power to dispose thereof, for any other use or purpose whatsoever, and without any power of selling any part thereof.

[THE THIRD, FOURTH, FIFTH, SIXTH, AND SEVENTH SECTIONS OBSOLETE.]

CHAP. XV.

An ACT ratifying certain Articles in Addition to, and Amendment of, the Constitution of the United States of America, proposed by the Congress.

Passed 27th February, 1790.

Recital of the fifth article of the constitution of the United States.

WHEREAS by the fifth article of the constitution of the United States of America, it is provided that the congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to the said constitution, which shall be valid to all intents and purposes, as part of the said constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress. *And whereas*, in the session of the congress of the United States of America, begun and held at the city of New-York, on Wednesday the fourth of March one thousand seven hundred and eighty-nine, it was resolved by the senate and house of representatives of the United States of America in congress assembled, two-thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States; all or any of which articles, when ratified by three-fourths of the said legislatures, to be valid to all intents and purposes, as part of the said constitution, viz.

"ARTICLES in addition to, and amendment of, the constitution of the United States of America, proposed by congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

Amendments proposed by congress.

"Article the First. After the first enumeration required by the first article of the constitution, there shall be one representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by congress, that there shall be not less than one hundred representatives, nor less than one representative for every forty thousand persons, until the number of representatives shall amount to two

hundred; after which the proportion shall be so regulated by congress, that there shall not be less than two hundred representatives, nor more than one representative for every fifty thousand persons.

"Article the Second. No law varying the compensation for the services of the senators and representatives, shall take effect, until an election of representatives shall have intervened.

"Article the Third. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

"Article the Fourth. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

"Article the Fifth. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

"Article the Sixth. The right of the people, to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"Article the Seventh. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury; except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

"Article the Eighth. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed; which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

"Article the Ninth. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

"Article the Tenth. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

"Article the Eleventh. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

“ Article the Twelfth. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

And whereas the legislature of this state have considered the said articles, and do agree to the same, except the second article ; Therefore,

Ratified except the second.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the said articles, except the second, shall be, and hereby are ratified by the legislature of this state.

SEVENTEENTH SESSION.

CHAP. XLVII.

An ACT ratifying a certain Article proposed by Congress, as an amendment to the Constitution of the United States of America.

Passed the 27th March, 1794.

[Gr. v. 3. 140.—K.&R. v. 1. 158.]

Recital of the fifth article of the constitution of the United States.

WHEREAS by the fifth article of the constitution of the United States of America, it is provided, that the congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to the said constitution, which shall be valid to all intents and purposes as part of the said constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by congress. *And whereas*, in the session of the congress of the United States of America, begun and held at the city of Philadelphia, in the state of Pennsylvania, on Monday the second of December, one thousand seven hundred and ninety-three, it was resolved, by the senate and house of representatives of the United States of America, in congress assembled, two thirds of both houses concurring, that the following article be proposed to the legislatures of the several states, as an amendment to the constitution of the United States, which, when ratified by three fourths of the said legislatures, shall be valid as part of the said constitution, viz. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state. *And whereas* the legislature of this state have considered the said article, and do agree to the same : Therefore,

Amendment proposed by Congress.

Ratified.

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That the said article shall be, and hereby is ratified by the legislature of this state.

CHAP. LXIV.

An ACT complying with the Act of Congress respecting Balances reported against certain States by the Commissioners appointed to settle the Accounts between the United States and the several States.

Passed 28th March, 1800.

[K.&R. v. 1. 170.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That this state doth hereby engage to expend within five years after the passing of this act, in erecting, enlarging and completing fortifications within this state, for the defence of the United States, at such place or places, (the jurisdiction whereof shall be previously to such expenditure ceded by this state to the United States, with reservation, that process civil and criminal, issuing under the authority of this state, may be served and executed therein) and according to such plan or plans as shall be approved by the president of the United States, a sum in money which, with the sums already expended by this state since the establishment of the present government of the United States, in fortifying any place within this state, and for which this state may be credited as herein after mentioned, shall be equal to the sum assumed by the United States in the debt of this state, upon the principles mentioned and contained in the act of Congress, entitled *An act respecting balances reported against certain states by the commissioners appointed to settle the accounts between the United States and the several States.*

A sum of money to be expended by this state, in fortifications, on certain terms.

II. *And be it further enacted,* That it shall be lawful for the comptroller of this state, and he is hereby authorised and required to liquidate and settle with the secretary of the treasury of the United States, the sum for which this state is to be credited, according to the directions of the said act of congress, for money expended in fortifying any place in this state, including the cannon and military stores belonging to this state, now in or appertaining to such fortifications, and to procure credit to be given to this state on the books of the United States for the same, as well as for the sum hereby engaged to be expended in erecting, enlarging and completing fortifications for the defence of the United States, and also to settle with the secretary of the treasury of the United States, the rate at which credits shall be given for the money which shall be expended by virtue of this act.

Comptroller to liquidate and settle certain sums with the secretary of the treasury of the United States.

III. *And be it further enacted,* That the sum of twenty thousand dollars shall be, and hereby is appropriated for the purpose aforesaid in the present year, which sum shall be paid out of any unappropriated money that may be in the treasury, and shall be expended in erecting, enlarging and completing fortifications in this state for the defence of the United States, according to the directions of the said act of congress; and the person administering the government of this state shall be, and hereby is required to procure the necessary plans and directions for the purposes aforesaid, and to appoint and employ such agent or agents as he may deem proper, to superintend the work, and to purchase the

Appropriation for the present year.

requisite materials, which agents shall be respectively accountable to the United States, if required, as well as to this state, for the expenditure of all money to be received by them.

Comptroller to make a further liquidation with the said secretary.

IV. *And be it further enacted*, That the comptroller is hereby authorised and required to liquidate and settle with the secretary of the treasury of the United States the sum of money expended by this state in recently erecting fortifications in the city of New-York, and for the fortifications on the northern and western frontiers of this state, including the cannon and military stores now in, or appertaining to such fortifications, and to procure credit to be given to this state on the books of the United States for the same; *Provided*, any law for that purpose shall be passed by the congress of the United States.

How the sum engaged to be expended, may be further applied.

V. *And be it further enacted*, That if it shall be deemed necessary to expend, under the directions of the president of the United States, the whole or any part of the sum by this act engaged to be expended, in erecting, enlarging or compleating fortifications on York island, or in any other place in this state, it shall be lawful so to do; *Provided*, the congress of the United States shall dispense with the cession of the jurisdiction of the place or places so to be fortified.

TWENTY-FIFTH SESSION.

CHAP. CXIX.

An ACT for the Payment of certain Officers of Government, and for other Purposes.

Passed April 5th, 1802.

[W. v. 3. 186.]

XXXV. *And be it further enacted*, That it shall and may be lawful for the person administering the government of this state to desist from the further execution of the act, entitled "An act complying with the act of congress respecting balances reported against certain states by the commissioners appointed to settle the accounts between the United States and the several states," and the comptroller shall not draw on the treasurer of this state for any of the monies specified in the said recited act, other than such as shall be due for contracts made by his excellency the governor for services in pursuance of the said act, until the further order of the legislature.

NINETEENTH SESSION.

CHAP. XLIII.

An ACT to incorporate such Persons as may associate for the Purpose of procuring and erecting Public Libraries in this State,

Passed 1st of April, 1706.

[Gr. v. 3. 320.—K.&R. v. 2. 256.]

Preamble

WHEREAS a disposition for improvement in useful knowledge has manifested itself in various parts of this state by associ-

ating for procuring and erecting social and public libraries ; *And whereas* it is of the utmost importance to the public that the sources of information should be multiplied and institutions for that purpose encouraged and promoted :

I. *BE it therefore enacted by the People of the State of New-York,* On 401 being subscribed trustees may be elected. *That from and after the passing of this act, it shall and may be lawful for any number of persons, not less than twenty, in any county, town, village or neighborhood, who shall subscribe in the whole not less than forty pounds, and who shall by writing under their hands signify their consent and desire to associate themselves together for the purpose of procuring and erecting a public library, to assemble on the second Tuesday of the month in which they shall determine to meet at a place previously agreed on by a majority of the subscribers, to elect, nominate and appoint not less than five nor more than twelve of their number as trustees, to take charge of the monies belonging to the corporation thereby erected and to transact all affairs relative to the same.*

II. *And be it further enacted,* Election how to be held. *That the said election to be held as aforesaid shall be conducted in the following manner, to wit : That whenever two-thirds of the subscribers shall assemble at the time and place previously agreed on and appointed, they shall proceed to elect a chairman by ballot from among themselves who shall preside at such election, receive the votes of the subscribers and be the officer to return the names of those who by plurality of voices shall be elected to serve as trustees for the said corporation ; that the said returning officer shall immediately after said election, certify under his hand and seal the names of the persons elected to serve as trustees for said library, in which certificate the style, name or title of the said corporation (which shall for ever thereafter be the style, name or title by which the said corporation shall be distinguished and known) shall be particularly mentioned and described, which said certificate being first duly proved or acknowledged before the chancellor of this state, or one of the judges of the supreme court, or any one of the judges of the court of common pleas of the county for the time being, in the same manner in which deeds or other writings have usually been proved or acknowledged, shall be forthwith recorded by the clerk of the county for the time being, in a book to be by him kept for that purpose, for which he shall receive a fee of eight shillings and no more.*

III. *And be it further enacted,* Name of the trustees and style of the corporation to be certified and recorded. Trustees and their associates to be a body corporate. *That the persons so elected, returned and registered shall be and hereby are declared to be trustees for said library, and that the said trustees from the time of their election as aforesaid, and their associates, and such other persons as shall from time to time become members of the corporation hereby authorized to be erected, shall be and hereby are ordained, constituted, appointed and declared to be one body corporate and politic, in fact and in name, by the name, style or title mentioned and described in the said certificate so to be recorded as aforesaid, and by that name shall have succession, and they and their successors shall and may for ever thereafter by the same name be able and capable in law to sue and be sued, implead*

and be impleaded, answer and be answered unto, defend and be defended in all courts of common law or equity whatsoever, in all manner of actions, suits, causes, controversies, matters and things whatsoever, and that they and their successors shall have a common seal, and may break, alter and change the same at their discretion ; and also, that the said trustees and their successors by the same name and title described in said certificate, from the time of their election aforesaid shall be capable in law of purchasing, holding and conveying any estate real or personal for the use of the said corporation : *Provided*, Such real and personal estate so held shall not at any one time exceed the annual value of five hundred dollars exclusive of the books and of the annual payments which shall be directed to be made by the members of the said corporation.

Number of trustees limited, and a chairman, treasurer and librarian to be appointed.

IV. And for the better execution of the aforementioned purposes, *Be it further enacted*, That for ever hereafter there shall not be less than five nor more than twelve trustees for every library so incorporated as aforesaid, who shall hold their offices for one year and until others be elected in their places, and shall manage the business of the said corporation ; and that there shall for ever hereafter be one chairman of the said trustees, one treasurer and one librarian to be appointed in the manner hereinafter mentioned ; and that it shall be lawful for the said trustees in their discretion, whenever they conceive it necessary, to appoint one and the same person treasurer and librarian.

Offices of trustees when to determine, and new trustees to be elected.

V. And in order to keep up a perpetual succession of trustees, *Be it further enacted*, That the offices of the said first trustees shall determine in the following year on the second Tuesday in the same month in which they were chosen, and that on the first Tuesday in the same month in which the first election was held in every year for ever thereafter, there shall be a general meeting of the members of the corporation at some convenient place to be from time to time ascertained and fixed by the bye-laws of the said corporation, and that then and there by plurality of votes of such members as shall so meet, not less than five nor more than twelve trustees shall be elected by ballot to serve the ensuing year ; that any person holding more than one right in said library shall be entitled to one vote for each right he or she shall hold in the same ; that the trustees of the said library shall annually at their first meeting on or after the day in which their offices commence appoint one of the said trustees their chairman ; that in case of the death, removal, refusal or neglect to serve of the chairman for the time being, it shall be lawful for the trustees of the said library at any of their meetings to appoint another chairman instead of the one dying, removing, refusing or neglecting to serve as aforesaid, to remain in office till the expiration of the time during which his predecessor was entitled to serve, and when and as often as any vacancy shall happen by the death, removal, resignation or neglect to serve of any of the said trustees, it shall be lawful for the chairman of the said trustees, or on his neglect or refusal for any other two of the said trustees, to summon a meeting of the members of the said corporation at a place fixed by the bye-laws of said corporation, for the purpose of elect-

Chairman when to be appointed.

Vacancies how supplied.

ing another or other person or persons instead of such as shall have so died, removed, refused or neglected to serve as aforesaid, and that such person or persons so to be chosen trustee or trustees at such meeting as last aforesaid, shall respectively remain in office during such time as the person in whose stead such trustee shall be chosen would have done in case such death, removal or refusal had not happened and no longer; and that the trustees of the said library shall at every such annual meeting of the members of the said corporation, exhibit to the members a state of the said library, the minutes of the proceedings of the trustees during the year immediately preceding such meeting, with the treasurer's and librarian's accounts, stating the amount of receipts and expenditures during such year.

Trustees annually to exhibit a state of the library.

VI. *And be it further enacted*, That the said trustees shall have stated meetings once in every quarter in every year, at such time and place as shall from time to time be appointed for that purpose, that the chairman or any two trustees of the said library for the time being shall and may from time to time, as occasion may require, summon and call together, at such place as shall from time to time be appointed by the bye-laws of the said corporation, the trustees of the said library, giving them at least two days previous notice of such meeting; that the chairman and a majority or more of the said trustees shall form a board of trustees, and that in the absence of the chairman the trustees so met shall choose another to serve on that occasion, that the chairman shall have a casting vote and no other, that the chairman and a majority of the trustees so met shall have full power and authority to adjourn from day to day, or for such other time as the business of the said corporation may require, and from time to time to appoint, and at their pleasure to displace a treasurer and librarian of the said library, and to appoint other or others in their stead and place, to ascertain the compensation to be allowed the treasurer or librarian or either of them for their service in their stations respectively, and to regulate and appoint to them the said treasurer and librarian or either of them their respective powers, trusts and duties; to direct the application of monies belonging to the said corporation to the purchase of such books and apparatus as they shall think proper, to the providing of a room or house for the safe keeping of the books of the said library, and to transact, do, manage and perform, in the name of the said corporation, all and every act and acts, thing and things whatsoever which shall be necessary to be done, and which the trustees of said library are by this law authorized to do; and to make, frame, constitute, establish and ordain, from time to time, and at all times hereafter, such laws, constitutions, ordinances and regulations for the government of the officers, members and servants of said corporation, for regulating the terms upon which the books of the said library shall be lent out both to the members of the said corporation and others, for fixing and ascertaining the times and places of the quarterly meetings of the said trustees, for altering, fixing and ascertaining the places of meeting of the members of the said corporation, for the election of trus-

To have stated meetings.

Their powers.

tees, for regulating the management and disposition of the books of the said library, and the monies, funds and effects belonging to the said corporation, the mode of transferring rights in the said library from one person to another, and all other the business and affairs whatever of the said corporation, as they or the major part of them so legally met shall judge best for the general good of said corporation, and for the more effectual promoting, increasing and preserving the said library, and the same or any of them to alter, amend or repeal, from time to time, as they or a major part of them so met shall think proper : *Provided*, Such laws, constitutions, regulations or ordinances be not repugnant to the laws of this state.

Shares assign-
able.

VII. *And be it further enacted*, That it shall and may be lawful for each and every of the members for the time being of the said corporation, his or her executors, administrators and assigns, to give, sell, alien, assign, devise and dispose of their respective rights in the said library, and that their respective assigns shall be members of the said corporation, and shall be entitled to all and every the same rights and privileges in said library and said corporation as the original members are entitled to by this act : *Provided*, That a part of a right in said library shall not entitle the proprietor or owner thereof to any privilege whatsoever in said library or corporation.

New mem-
bers how ad-
mitted.

VIII. *And be it further enacted*, That it shall and may be lawful at such meeting of a majority or more of the said trustees of the library for the time being, to make any bye-laws, constitutions, or ordinances of the said corporation, to admit under the common seal of the said corporation such and so many persons, members of the said corporation, as they shall think beneficial to the said library, which members so admitted shall be entitled to have, hold, and enjoy all and every the same rights and privileges as the original members are entitled to by this act.

Annual pay-
ment to be
made by a
certain day.

IX. *And be it further enacted*, That each and every member of the said corporation for the time being, shall on or before the first Tuesday in the month fixed for the election of trustees, annually pay to the treasurer of said library, for the use of the said corporation, the sum or sums which shall be fixed by the bye-laws of said corporation, and that whenever any of the members of the said corporation shall neglect to pay the said annual sum, or any other sum which of right shall become due to the corporation, for the space of forty days next after the day on which the same ought to have been paid, that then the person or persons from whom the same shall be due, shall be precluded from exercising any of the privileges to which he became entitled by virtue of his being or becoming a member of the said corporation, until such sums shall be fully satisfied; and if such sums shall not be paid within two years after any such sums shall become due as aforesaid, that then and after the expiration of two years from the time such payment shall become due, that the person or persons from whom the same shall become due, shall thereupon forfeit and be utterly excluded from all his, her, or their rights and privileges in the said library and corporation.

Forfeitured
for neglect.

X. *And be it further enacted*, That in case it should happen that an election of trustees should not be made on any day when pursuant to this act it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but that it shall and may be lawful on any other day to hold and make an election of trustees, in such manner as shall have been regulated by the laws and ordinances of the said corporation; *Provided always*, That nothing in this act shall be so construed as to authorize any person or persons whatsoever under colour or by virtue of any incorporation authorised by this act, to do or transact any business, matter or thing, save what appertains to a library, according to the true intent and meaning of this act.

Election of trustees not made pursuant to this act may be held at another day.

Prov. 30.

The importance of these acts with regard to the real property affected by them in the Western District, peculiarly indicate the propriety of their publication.

SEVENTEENTH SESSION.

CHAP. I.

An ACT for registering Deeds and Conveyances relating to the Military Bounty Lands.

Passed 8th January, 1794.

[Gr. v. 3. 99.—K.&R. v. 2. 262.]

WHEREAS it is represented to the legislature that many frauds have been committed respecting the titles to the lands granted by this state as bounty lands to the officers and troops of this state who served in the army of the United States, and to others on account of their military services in the army of the United States, by forging and antedating conveyances, and by conveying the said lands to different persons, and by various other contrivances, so that it has become very difficult to discover in whom the legal title to some of the said lands is now vested: For remedy whereof, and in order to detect the said frauds, and to prevent the like frauds in future,

Preamble.

I. *Be it enacted by the People of the State of New-York represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That all deeds and conveyances heretofore made and executed, or pretended so to be, of or concerning, or whereby any of the said lands may be any way affected in law or equity, shall on or before the first day of May, one thousand seven hundred and ninety-four, be delivered to and deposited with the clerk of the city and county of Albany for the time being,

Certain deeds to be deposited with the clerk of the county of Albany.

and all deeds and conveyances, (except mortgages duly registered according to law) heretofore made and executed, or pretended to be, of or concerning or whereby any of the said lands may be any way affected in law or equity, which shall not be delivered to and deposited with the said clerk on or before the said first day of May aforesaid, shall be adjudged fraudulent and void against the subsequent purchaser or mortgagee for valuable consideration; and the said clerk shall in the presence of the person delivering the same, register the names of every person whose name

3 Johns. Rep. 300.

To be deemed fraudulent if not so deposited.

Duty of the clerk.

shall be to any deed as having executed the same, in a book to be by him expressly provided for that purpose, and in alphabetical order, and annex to such name the date of the deed and the name of the person to whom the same is granted, for which service the said clerk shall receive six pence, and every such deed shall be filed in bundles, marked in alphabetical order, to the end that persons inclining to have recourse thereto, may inspect the same, paying the usual fees for search and inspection; and that the said clerk shall on or before the first day of June, which shall be in the year one thousand seven hundred and ninety-four, deliver all the said deeds and conveyances so deposited in his office to the clerk of the county of Herkimer for the time being, there to remain for the benefit of all persons interested therein; and that all deeds and conveyances hereafter to be made and executed, of or concerning, or whereby any of the said lands may be any way affected in law or equity, shall be recorded by the said clerk of the said county of Herkimer in books to be by him provided for that particular purpose, and in which no other matters shall be entered; and that every deed and conveyance (except mortgages duly registered according to law,) hereafter to be made and executed, of or concerning or whereby any of the said lands may be any way affected in law or equity, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless the same be recorded as by this act is directed before the recording the deed or conveyance under which such subsequent purchaser or mortgagee shall claim: *Provided always*, That no such deed or conveyance shall be recorded unless the same shall be first duly acknowledged by the party who shall execute the same, before one of the judges of the supreme court of the United States, or one of the judges of the supreme court of judicature of this state, or a master in chancery, or one of the judges of the court of common pleas of the county where the lands intended to be conveyed shall be situated, and a certificate of such acknowledgment be indorsed upon the deed or conveyance, and signed by such judge or master in chancery; and no such judge or master in chancery shall take any such acknowledgment unless he shall then know or have satisfactory proof that the person making such acknowledgment is the same person described in such deed or conveyance.*

All future
deeds to be
recorded.

Now proven.

Duty of the
Clerk of the
county of
Herkimer.

II. *And be it further enacted by the authority aforesaid*, That the said clerk of the county of Herkimer, for the time being, shall personally reside at his said office, and shall hold no other office at the same time, and shall either in person, or by some sufficient deputy, for whom he shall be responsible, give due attendance at his office every day in the week, except Sunday, for the dispatch of all business belonging to the said office; and that every such clerk, as often as required, shall make searches concerning all deeds and conveyances deposited or recorded in his office as aforesaid, and give certificates concerning the same under his hand, if required, and make and deliver upon request of any person a true copy of any deed or conveyance deposited or

* This proviso was repealed as to future conveyances, vide K&R. v. 1. 480.

† This disqualification removed.—See next act and the act of 23d Nov. ch. 96, under this same head.

recorded in his office, and shall be entitled to have and receive for ~~his fee~~ every search one shilling and no more, and for every certificate one shilling and no more, in case the same do not exceed one hundred words; but if such certificate shall exceed one hundred words, then an additional sum at the rate of six pence an hundred for all the words contained in such certificate over and above the first one hundred words; and for recording deeds and conveyances, and for every copy of any deed, conveyance or record in his office, the like fees as the clerks of the several counties in this state are by law entitled to for the like services.

III. *And be it further enacted by the authority aforesaid, That* every deed and conveyance which shall be delivered at the said office to be recorded, shall be recorded in the order and as of the time when the same shall be delivered for that purpose, and every such deed and conveyance shall be considered as recorded from the time it is so delivered, and an entry shall be made on the margin of the record thereof of the day of the month and the year, and the hour, or time of the day such deed or conveyance is so recorded; and a certificate shall be indorsed on every such deed and conveyance, mentioning the certain day, hour and time when, and the book and page in which the same is so recorded, and the clerk shall sign the said certificate when so indorsed; which certificate shall be taken and allowed as evidence of such recording in all courts of justice whatsoever.

Deeds when to be considered as recorded.

IV. *And be it further enacted by the authority aforesaid, That* the record of every such deed and conveyance when so recorded as aforesaid, shall be taken and allowed as evidence of such deed or conveyance in all courts whatsoever.

What shall be considered as evidence of the same in all courts.

VI. *And be it further enacted by the authority aforesaid, That* if the said clerk, or any person entrusted by him, shall be guilty of any neglect or misdemeanor, or fraudulent practice in the execution of this act, such clerk shall be liable to pay treble damages, with full costs of suit, to every person who shall be injured thereby, to be recovered by action of debt, bill, plaint or information, in any court of record.

Offences in the execution of this act how punished.

VII. *And be it further enacted by the authority aforesaid, That* this act shall be deemed, taken, and adjudged to be a public act.

[FIFTH SECTION OBSOLETE.]

CHAP. XLIV.

An ACT to amend the act, entitled "An act for registering Deeds and Conveyances, relating to the Military Bounty Lands."

Passed 27th March, 1794.

[Gr. v. 3. 137.—K.&R. v. 2. 265.]

WHEREAS by the act, entitled, *An act for registering deeds and conveyances relating to the military bounty lands*, which became a law on the eighth day of January last, it is enacted, That all deeds and conveyances theretofore made and executed, or

Preamble.

pretended, so to be, of, or concerning, or whereby any of the said lands may be any way affected in law or equity, shall on or before the first day of May one thousand seven hundred and ninety-four, be delivered to, and deposited with, the clerk of the city and county of Albany for the time being; and the said clerk shall on or before the first day of June, which will be in the year of our Lord one thousand seven hundred and ninety-four, deliver all the said deeds and conveyances, so deposited in his office, to the clerk of the county of Herkimer for the time being, there to remain for the benefit of all persons interested therein: *And whereas* the said lands have been since erected into a separate county by the name of Onondaga; *And whereas* the time limited for depositing the said deeds and conveyances is too short; Therefore,

Time for depositing military deeds extended.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same,* That the time limited in and by the said act for delivering the said deeds and conveyances to the clerk of the city and county of Albany for the time being, and depositing the same with him, shall be and hereby is prolonged until the first day of May, which will be in the year of our Lord, one thousand seven hundred and ninety-five, and that the clerk of the said city and county of Albany, for the time being, shall, on or before the first day of June, which will be in the said year of our Lord, one thousand seven hundred and ninety-five, deliver all the said deeds and conveyances which have been or shall be so deposited in his office, to the clerk of the county of Onondaga for the time being, there to remain for the benefit of all persons interested therein; any thing in the said act to the contrary notwithstanding.

Clerk of Herkimer to deliver to the clerk of Onondaga certain deeds, &c.

II. *And be it further enacted by the authority aforesaid,* That the clerk of the county of Herkimer, for the time being, shall, upon demand, deliver to the clerk of the county of Onondaga, for the time being, all the books in which he shall have recorded since the eighth day of January last, in conformity to the said act, any deed or deeds, conveyance or conveyances, of or concerning, or whereby any of the said lands may be any way affected in law or equity, together with all deeds and conveyances, of or concerning the same lands then in his possession, taking a receipt for the same; and that thereupon the operation of the said act, as to the said clerk of the said county of Herkimer shall cease; and that the said clerk of the county of Onondaga, for the time being, shall thereafter do, execute and perform all and every the duties and services required by the said act to be done, executed or performed by the clerk of the county of Herkimer, for the time being, and in the same manner and form, and shall be entitled to the like rewards, and subject to the like penalties, as such clerk of the said county of Herkimer is entitled and subject to by the said act, and every thing to be done in the premises by the clerk of the county of Onondaga for the time being, shall be of the same validity and effect as if done by the clerk of the county of Herkimer before the passing of this act; any thing herein contained to the contrary notwithstanding.

And the clerk of Onondaga to execute the duties required by this act of the clerk of Herkimer.

CHAP. LI.

An ACT to settle disputes concerning the Titles to Lands in the county of Onondaga.

Passed the 24th March, 1797.

[Gr. v. 3. 425.—K.&R. v. 2. 266.]

WHEREAS a convention of Delegates from a number of towns in the county of Onondaga, have by their petition presented to the Legislature, prayed that a law may be passed, authorizing a speedy and equitable mode of settling disputes relative to the titles of land in that county : Therefore,

5 John. 139-

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly,* That Robert Yates, James Kent and Vincent Matthews shall be, and they are hereby appointed commissioners, with full power to hear, examine, award, and determine according to law and equity, all disputes and controversies respecting the titles, and all claims whatsoever to any lands in the county of Onondaga, and to examine any party or parties submitting to their examination and witnesses on oath, and to commit any witness refusing to be sworn or to answer any question or questions touching the premises, to the gaol of the county in which they may then sit, there to remain until he or she shall submit to be sworn, and to answer such question or questions : *Provided always,* That no person shall be obliged to answer any question which may tend to charge himself or herself with any crime, nor shall any witness be compelled to answer any question or questions wherein he or she shall be interested.

Robert Yates and others appointed commissioners relative to lands in the county of Onondaga.

III. *And be it further enacted,* That the said commissioners shall, as soon as conveniently may be, after the first day of June next, assemble together at Aurora, in the town of Scipio, in the county of Onondaga, and then and there, and at such other times and places as they shall from time to time think proper to appoint for that purpose, proceed to execute the trusts reposed in them by this act, and shall cause their award or determination upon every claim or controversy respecting any lands in the said county of Onondaga, to be entered in a book or books to be by them provided for that purpose, which award or determination shall, after the expiration of two years after the making thereof, become binding and conclusive to all persons, except such as conceiving themselves aggrieved by any such award or determination shall within the said two years dissent from the same, and give notice thereof to the said commissioners, or file the same in the office of the clerk of the county of Onondaga, and shall also, if not in the actual possession of such land, within three years after such award or determination, commence a suit or suits, either at law or in equity, to recover the land or to establish his or her right to the same, and shall prosecute such suit or suits to effect, in which case such award or determination shall not operate as a bar to such suit or suits ; but if no such suit or suits are brought within the times aforesaid and prosecuted to effect, then the said award or determination of the commissioners shall be final and conclusive ; and in case any

Commissioners to assemble at Aurora or at any other place, to proceed to execute their trusts.

3 John. Rep. 485.
5 John. Rep. 139.
6 John. Rep. 149 and 257.
8 John. Rep. 429 and 490.

Any suit abating by the death of the party may be revived or renewed.

When controversies are referred to the commissioners their determination to be final.

Commissioners to advertise their appointment and fix a time for their meeting.

To enter in a book all lands for which there appears no adverse claim.

When two or more claims appear on one tract & claimants do not appear, commissioners to advertise requiring their appearance;

And if they do not appear commissioners may then proceed to determine with the right however of dissenting.

such suit commenced within the time aforesaid shall abate by the death of the defendant, then the party dissenting, or if by his death, then his heirs or devisees, may at any time within one year revive such suit, or if necessary commence a new suit for the purpose aforesaid, and prosecute the same with like effect, as such first suit might have been prosecuted if it had not abated as aforesaid; and the said commissioners are hereby directed to enter in the said book or books, a note of the time of receiving every such dissent, and when they shall have executed the trusts and duties by this act committed to them, they shall deposit the said book or books in the office of the clerk of the said county of Onondaga, there to remain as records of their proceedings; *Provided always*, That if the parties in any case will enter into an agreement before the said commissioners, to abide by their determination, then and in every such case the award or determination of the said commissioners shall be final and conclusive as to such parties and their heirs for ever.

V. *And be it further enacted*, That the said commissioners shall, as soon as conveniently may be, after the passing of this act, cause a notice of their appointment to be inserted in the newspaper printed by the printer to the state, and in one of the newspapers printed in each county of this state in which a newspaper is printed, and therein fix the time of their first meeting, and require all persons having any dispute or controversy respecting any title or claim to any land in the said county of Onondaga, to appear in person or by their agents or attorneys, before the said commissioners, at the time and place therein mentioned, to exhibit their claims, that the said commissioners may proceed in the execution of the trusts committed to them.

VI. *And be it further enacted*, That as to all the lands in the said county of Onondaga concerning which no adverse claim shall appear to be made before the said commissioners, they shall cause an entry to be made in the said books to that effect, but in all cases where interfering claims shall appear to be made, they shall examine and determine the same; and in all cases where there are filed or recorded in the said office two or more deeds from one and the same person, or in the same right to different persons, if any person interested under either of them shall neglect to make his claim, and in all cases where several persons appear to have claims to one and the same piece of land, and any of them do not appear before the said commissioners, they shall cause a notice to be published in the newspapers aforesaid, and continued for six weeks, requiring all persons interested in such land to appear at a certain time and place therein mentioned, not less than six months from the date of such notice, and exhibit their claims to the same land, and after the expiration of the time therein mentioned, it shall be lawful for the said commissioners to proceed to the examination and determination of all matters concerning the said land and the title to the same, whether all or any of the parties interested therein appear and exhibit their claims or not, saving to all persons aggrieved by any such award or determination the right of dissenting and prosecuting in the manner aforesaid.

VII. *And be it further enacted*, That if the party dissenting in any of the cases aforesaid shall be in the actual possession of the premises, then and in every such case the award or determination of the said commissioners so dissented from, shall, as to the party so dissenting, be considered of no effect; and in every such case, unless the party in whose favor such award or determination shall be made, shall within three years after such award is made, commence a suit either at law, or in equity, to recover the land or to establish his or her right to the same, and shall prosecute such suit with effect, then such person in whose favour such award or determination is made, and his and her heirs shall for ever be barred of all right, title and claim in and to the land concerning which such award or determination is made, but if any such suit should abate by death or otherwise, such suit may be revived, or a new suit brought as aforesaid, within the time herein before limited for that purpose as aforesaid.

The dissent of a party in possession to the award as to him of no effect, and the party in whose favor the determination is made to prosecute a suit for the recovery of the land.
4 John. Rep. 75.
5 John. Rep. 49.
8 John. Rep. 429, 430.

VIII. *And be it further enacted*, That all and every power and trust hereby vested in the said commissioners may be executed by them or any two of them; *Provided always*, That neither this act nor any thing therein contained shall extend or be construed to the prejudice of any person under the age of twenty-one years, or *feme covert*, or person not of sound mind or in prison, if such infant, *feme covert*, person not of sound mind, or prisoner, shall, within three years after coming to the age of twenty-one years, becoming *discovert*, of sound mind, and at liberty, make their dissent, and bring their suit and prosecute the same to effect as aforesaid.

Powers given to commissioners may be executed by any two of them.
This act not to prejudice any person under age, *feme covert*, or insane.

X. *And be it further enacted*, That in all cases where it shall appear to the said commissioners that the people of this state, or some person or persons other than any of the claimants is or are entitled to any of the said lands, they shall cause an entry to that purpose to be made in the said books, and report all such cases to the legislature.

When the state becomes interested in any of the land the same to be noted in a book.

XI. *And be it further enacted*, That in case of the refusal to serve, or death of any of the commissioners named in this act, it shall and may be lawful for the person administering the government of this state for the time being, from time to time to appoint another person or persons as the case may be, to supply every such vacancy; and the person or persons so appointed shall continue to execute the trust by this act conferred as fully as though he or they had been named in this act, until another or others shall be appointed by legislative act.

Vacancy by the death, &c. of either of said commissioners how supplied.

XII. *And be it further enacted*, That the commissioners appointed, or to be appointed by virtue of this act, shall not exercise any of the powers hereby granted to them after the first day of June, one thousand eight hundred.

Commissioners powers limited.

[RESIDUE OF THIS ACT OBSOLETE.]

LAWS OF NEW-YORK,
 TWENTY-FIRST SESSION.

CHAP. XII.

An ACT to amend the Act, entitled, "An Act to settle Disputes concerning the Titles to Lands in the County of Onondaga."

Passed February 12th, 1798.

[Lor. And. 256. sess. 21. ch. 12.—K&R. v. 269.]

Manner in which certain deeds are to be acknowledged

s Johns. Rep. 77.

V. *AND be it further enacted*, That no deed, conveyance or instrument in writing, executed on or before the first day of May last, relating to any lands in the county of Onondaga, shall hereafter be registered or recorded, unless the same be acknowledged or proved in the manner directed by the act, entitled, *An act relative to the acknowledgment of deeds*, passed the 11th of February, 1797, any thing in the said act to the contrary notwithstanding.

[RESIDUE OF THIS ACT OBSOLETE.]

TWENTY-SECOND SESSION.

CHAP. LXVII.

An ACT for extending the Time limited by the last Section of the Act, entitled "An Act to settle Disputes concerning the Titles to Lands in the County of Onondaga."

Passed 30th March, 1799.

[Lor. And. 730.—Sess. 22, ch. 67.—K&R. v. 2. 270.]

Limitation of former act extended.

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly*, That the period limited by the last section of the act, entitled *An act to settle disputes concerning the title to lands in the county of Onondaga*, shall be and is hereby extended to the first day of June, in the year one thousand eight hundred and one.

A certain book to be filed in the office of the clerk of Cayuga.

II. *And be it further enacted*, That a book similar to the one which by the third section of the said recited act is directed to be filed in the office of the clerk of the said county of Onondaga, shall be filed by the commissioners under the said act in the office of the clerk of the county of Cayuga, to have the like effect which by the same section is given to the said first mentioned book: *Provided*, That the determinations made or to be made on claims to lands situate in the present county of Onondaga, shall be entered in the said book provided for that county, and the determinations on claims to lands situate in the present county of Cayuga shall be entered in the said book to be provided for that county.

TWENTY-THIRD SESSION.

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CHAP. XCVI.

An ACT to amend the Act, entitled "An Act to divide the County of Onondaga."

Passed 4th April, 1800.

[Lor. And. 195.—Sess. 23, ch. 96.—K.&R. v. 2. 270.]

III. *And be it further enacted*, That the office of the clerk of the county of Cayuga shall be deemed and considered as the proper office for the recording of all deeds, instruments and papers now deposited in the same office, and of all deeds, instruments and papers bearing date prior to the eighth day of January in the year one thousand seven hundred and ninety-four, as by any law; usage or custom may be recorded, notwithstanding the lands to which such deeds, instruments and papers relate may be within the county of Onondaga.

Certain deeds and papers to be recorded in the clerk's office of Cayuga.

IV. *And be it further enacted*, That it shall and may be lawful for the clerk of the said county of Onondaga to hold and exercise any additional office or appointment, in like manner as the clerks of the respective counties in this state are by law enabled to do, any thing in any former law to the contrary notwithstanding.

Privilege to the clerk of Onondaga.

[RESIDUE OF THIS ACT OBSOLETE.]

TWENTY-FOURTH SESSION.

CHAP. LXIII.

An ACT further extending the Time limited by the last Session of the Act entitled "An Act to settle Disputes concerning the Titles to Lands in the County of Onondaga."

Passed 4th April, 1801.

[Lor. And. 180.—Sess. 24, ch. 63.—K.&R. v. 2. 271.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the period limited by the last section of the act, entitled "*An act to settle disputes concerning the titles to lands in the county of Onondaga*", shall be and hereby is extended to the first Tuesday of March next: *Provided always*, That the commissioners under the said act shall adjourn on or before the tenth day of April in the present year, and shall not again meet until the second Tuesday of January next.

Limitation of the act hereby named extended.

Provide

TWENTY-SIXTH SESSION.

CHAP. CVIII.

An ACT to revive the Powers of the Commissioners heretofore appointed to settle Disputes concerning the Titles to Lands in the County of Onondaga.

Passed April 6th, 1803.

[W. v. 3. 355.]

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the period limited by the last

Period called

Proviso.

section of the act, entitled " An act to settle disputes concerning the titles to lands in the county of Onondaga," shall be and is hereby further extended until the first day of April, one thousand eight hundred and four : *Provided nevertheless,* That the commissioners appointed by and in pursuance of the said act, shall not be allowed any compensation for any time beyond three months, for services during the said period ; which compensation shall be at the rate of three dollars per day to each of the said commissioners.

Clerk and his duty.

II. *And be it further enacted,* That the said commissioners shall be and hereby are authorized to appoint a clerk, whose duty it shall be to keep the minutes of the board, and to complete such awards as shall be from time to time given to him by the said commissioners ; and that the said clerk shall be allowed such compensation for his services as was allowed by law to the clerk heretofore appointed.

Meeting of the commissioners, &c.

III. *And be it further enacted* That the said commissioners shall hold a meeting at the city of Albany, to commence on the third Tuesday in November next, and that it shall be the duty of the clerk of Cayuga to attend such meeting, with the deposits and records of the late county of Onondaga now remaining with him, unless he shall, on or before the first day of September next, give notice in writing to the said commissioners, or one of them, that he declines doing the same, in which case the said commissioners, or any two of them, shall be and hereby are authorized to nominate and appoint some fit and proper person to receive the said deposits and papers from the said clerk, and the said clerk shall deliver over the said deposits and papers, and all books relating to the same, to the person so to be appointed ; and the said deposits, papers and books, when so delivered, shall be and remain with the person so authorized, or with such person or persons as shall be named for such purpose by the said commissioners, or any two of them.

Duty of commissioners.

IV. *And be it further enacted,* That the said commissioners shall, at the expiration of the said period, deposit all the books, writings and papers in the office of the clerk of the county of Cayuga, which shall relate to the duties of their office : And it shall be the duty of the clerk of the county of Montgomery to deliver to the clerk of the county of Cayuga the book filed in the office of the clerk of the county of Montgomery, in pursuance of the fifth section of an act, entitled " An act to appropriate the lands set apart to the use of the troops of the line of this state lately serving in the army of the United States, and for other purposes therein mentioned," passed the twenty-eighth day of February, one thousand seven hundred and eighty-nine.

Papers, &c. where to be deposited.

CHAP. CXI.

An ACT relative to unappropriated and forfeited Lands, and for other Purposes.

Passed April 11th, 1804.

[W. v. 3. 505.]

XV. *And be it further enacted*, That the powers of the late Onondaga commissioners be and the same are hereby revived, so far only as that it shall and may be lawful for them, at any time before the first day of January next, to complete all the awards that are made out and ready for signing : *Provided nevertheless*, That the said commissioners shall not be entitled to any compensation for any services to be performed by them by virtue of this act.

TWELFTH SESSION.

CHAP. XXXII.

An ACT for the Sale and Disposition of Lands belonging to the People of this State.

Passed 25th February, 1789.

[K.&R. v. 2. 254.]

II. *AND be it further enacted by the authority aforesaid*, That in every township so laid out or to be laid out as aforesaid,* the surveyor-general shall mark one lot on the map, *gospel*, and one other lot *schools* ; which lots shall be as nearly central in every township as may be, and the lots so marked shall not be sold, but the lots so marked *gospel*, shall be reserved for and applied to supporting the gospel in such township, and the lot marked *schools*, for the use of schools in such township.

Surveyor-general's duty in laying out lands for the support of the gospel and schools.

* The 1st section of this act related to the Twenty Townships in Chenango County.

TWENTY-FIRST SESSION.

CHAP. XLVIII.

An ACT relative to the Lots of Land reserved for the support of the Gospel and Schools, and for the Promotion of Literature, in the Military Tract in the County of Onondaga.

Passed March 23d, 1798.

[K.&R. v. 2. 254.]

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the supervisor of each of the towns in the county of Onondaga, for the time being, in conjunction with the

Supervisors and commissioners empowered to

take possession of lands designated as gospel and school lots.

And may lease the same.

To institute suits for the recovery of possession and for trespasses committed.

Monies arising therefrom to be appropriated.

Further duty of the supervisors and commissioners.

Penalty for neglect or refusal thereof.

tion with such commissioners, not exceeding three in number, as the freeholders and inhabitants of any of the said towns, shall at their annual town-meeting respectively appoint, shall be and are hereby authorised and empowered to enter upon and take possession of the lots of land, situate in the several towns for which such supervisors and commissioners shall have been appointed, which were designated for gospel and school lots by virtue of the act, entitled "An act for the further direction of the commissioners of the land-office, and for other purposes therein mentioned," passed the 11th day of April, 1796, and thereupon the supervisor and such commissioners of any of the said towns in which such lots of land may be situated, shall and may lease the same, upon such terms and for such period of time, as they in their discretion may deem proper, not exceeding ten years; *Provided nevertheless*, That whenever the freeholders and inhabitants of any of the said towns, shall in legal town-meeting instruct the said supervisor and commissioners in the premises, the leases of the same lands shall be made conformably to such instructions, subject to the limitation of time as aforesaid.

II. *And be it further enacted*, That it shall and may be lawful for the supervisor and commissioners of any of the said towns as aforesaid, and they are hereby authorised and empowered to institute such suit or suits and prosecute the same to judgment, in the name of such supervisor, as may be necessary for the recovery of the possession of any of the said lots designated as aforesaid, or for any trespasses that may have been heretofore or shall be hereafter committed thereon, or upon the breach of any of the covenants which may be contained in any of the said leases made in pursuance of this act; which said suits shall not be abated or any way affected in law, by the death or removal from office of any such supervisor as aforesaid.

III. *And be it further enacted*, That the monies arising from the leasing of the said lots of land as aforesaid, and from the trespasses aforesaid, shall be applied to the use of schools or support of the gospel, in the original townships as surveyed in which such lots shall be respectively situated and for no other purpose; which said application shall be made either for schools or gospel, or both, and in such way and manner as the freeholders and inhabitants of the towns in which the same lands shall lie shall in legal town-meeting from time to time direct, order and appoint.

IV. *And be it further enacted*, That the said supervisors and commissioners shall and hereby are required to report to the towns for which they shall have been appointed, at their annual town meeting their proceeding under this act; and upon the expiration of their offices or removal from office, shall deliver over to their successors in office, all such leases and documents as they may be possessed of by virtue of this act; and also all such monies as they may have received upon and by virtue of the leases aforesaid; and in case any of the supervisors or commissioners shall refuse or neglect to report their proceedings as aforesaid, or deliver over such leases and documents, or pay over the monies as aforesaid, such supervisor or commissioner shall forfeit and pay to the town for which he shall have been appointed twenty-five

dollars, to be applied for the uses and in the manner aforesaid ; which said penalty shall be recovered in the name of the supervisor of the town, for the time being, in which the same penalty shall have been incurred, by action of debt, bill, plaint or information, in any court of record having cognizance thereof.

V. *And be it further enacted*, That it shall and is hereby declared to be the duty of the several supervisors of the towns in the said county of Onondaga, to take charge of and oversee the lots of land situate in the respective towns for which such supervisors shall have been appointed, and which are designated by the act aforesaid for the promotion of literature, and such other lots in each town as are reserved to the people of this state ; and in case of any encroachment or trespasses upon the same lands, to report the author or authors thereof to the assistant attorney general for the district including the said county of Onondaga, who is hereby authorised and required to institute and prosecute to judgment such suit or suits in the name of the people of the state of New-York, against such trespassers as he may deem necessary, and the monies recovered in such suits he is hereby required to pay over to the treasurer of this state.

Duty of the supervisors.

In cases of encroachments or trespasses how to proceed.

[Note.—The 1st sec. of act 19th sess. ch. 69, obsolete.]

THIRTIETH SESSION.

CHAP. CXXXV.

An ACT relative to the Lots of Land reserved for the support of the Gospel and Schools, in the Counties of Onondaga, Cayuga and Seneca,

Passed April 4, 1807.

[W. v. 5. 152.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the supervisors and two commissioners, from time to time to be chosen by the towns in which the lots appropriated for the support of the gospel and schools respectively lie, shall have power from time to time to lease the said lots on such terms and for such time as they shall think proper, not exceeding twenty-one years; and that the monies arising from such leases, be appropriated according to the provisions of the act relative to said lots, passed the twenty-third day of March, in the year one thousand seven hundred and ninety-eight.

Supervisors and two commissioners to lease lots.

II. *And be it further enacted*, That all commissioners for leased lots, chosen in pursuance of the aforesaid act, having any fees in their hands, not appropriated by their respective towns, I pay over to the commissioners, to be chosen in pursuance his act, who are authorised to collect and receive the same, I appropriate the same in such manner as shall be directed by six respective towns, in pursuance of the aforesaid act.

Commissioners to pay fees monies.

**LAWS OF NEW-YORK,
THIRTY-FIRST SESSION.**

CHAP. CCXVIII.

An ACT to amend an Act, entitled "An Act relative to the Lots of Land reserved for the Support of the Gospel and Schools, and for the Promotion of Literature in the Military Tract in the County of Onondaga," passed March 23, 1798.

Passed April 11, 1808.

[W. v. 5. 404.]

Monies arising from rents of gospel and school lots how distributed.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the monies arising from the annual rents and profits of the gospel lots, in each township, shall be equally divided by the supervisor and commissioners appointed in each township, between the several religious societies legally organized in such township; and that the monies arising from the annual rents and profits of the several school lots shall be distributed among the schools kept in each respective township by teachers to be approved of by the supervisor and commissioners constituted by the act to which this is an amendment, or a majority of them in said township, in proportion to the aggregate number of days which the scholars in each respective school shall have respectively attended such schools in the year immediately preceding such division.

Certain powers, &c. extended.

II. *And be it further enacted,* That the powers, privileges and restrictions contained in the first mentioned act, passed 23d March, 1798, shall be and the same are hereby extended to all the townships in this state wherein any lot or lots of land are reserved for the support of the gospel and schools; *Provided nevertheless,* That where in any of the aforesaid townships the lots are already leased according to the vote of the people of any such township, in legal town meeting assembled, in pursuance of the provisions of the act aforesaid, such lease or leases shall be deemed to be good and valid in law, any thing in the aforesaid act to the contrary notwithstanding.

TWENTY-FIFTH SESSION.

CHAP. XLIV.

An ACT to prevent Horse-Racing, and for other Purposes therein mentioned.

Passed March 19th, 1802.

[W. v. 3. 52.]

Horse racing for money &c. a public nuisance.

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That all racing and running, pacing or trotting of horses, mares or geldings, for any bet or stakes, in money, goods or chattels, or other valuable thing, shall be and hereby are declared to be common and public nuisances, and offences against this state; and the authors, betters, stakers, stake-

holders, parties, contrivers and abettors thereof, shall be proceeded against, and punished by fine or imprisonment at the discretion of any court having cognizance thereof; and all public officers concerned in the administration of justice, are hereby strictly enjoined to cause this act to be faithfully executed.

13 Geo. 2.
c. 19.
18 Geo. 2.
c. 34.

II. *And be it further enacted*, That from and after the first day of August next, the owner or owners of every horse, mare or gelding, that shall be used, employed or improved in horse-racing, within this state, by his or their privy or permission, whereon any stakes are held, or any bets or wagers laid or dependent, either directly or indirectly, shall forfeit for every race so run, the value of every such horse, mare or gelding employed as aforesaid; and that every person or persons concerned in laying any bet or bets, or wagers on such race or races, shall forfeit the amount of the wager, bet or stake by any person or persons so laid, made or staked.

Penalty on owners keeping horses for racing.

III. *And be it further enacted*, That any and every such forfeiture, shall and may be recovered by action of debt, bill, plaint or information, before any court having cognizance thereof, and shall be applied, the one half to the use of any person or persons who shall prosecute the same to effect, and the other half to the overseers of the poor for the use of the city or town where such race or races shall be run, or such wager, bet or stake shall be laid, made or deposited.

Forfeiture how recovered and applied.

IV. *And be it further enacted*, That if any person or persons shall contribute or collect, or solicit any other to contribute or collect any money, goods or chattels to make up a purse, plate, or other thing or things, to be run for by any horse, mare or gelding, at any place in this state, such person or persons so offending, shall forfeit the sum of twenty-five dollars, for each and every offence, to be recovered and applied as aforesaid.

Persons raising a purse, plate, &c. what to forfeit.

V. *And be it further enacted*, That all and every contract hereafter to be made and entered into, for or on account of any sum or sums of money, or other thing, bet or staked, or depending on any such race or races as aforesaid, or concerning the same, or for or on account of any gaming by lot or chance of any kind, or under any description whatever, shall be deemed and adjudged void in law; and it shall be lawful for any person who may have paid any money or other thing upon the issue or event of any such race or game, to recover the same in like manner as is provided in the second and third sections of the act, entitled "An act to prevent excessive and deceitful gaming," passed the 21st of March, 1801.

Contracts on gaming or races void. 4 John. Rep. 437 per Van Ness J. 17 Ed. 4. c. 3. 3 H. 8. c. 3. 27 H. 8. c. 25. 33. H. 8. c. 9.

VI. *And be it further enacted*, That all racing or running of horses, mares or geldings, during the sitting of any court, and within one half mile thereof, whether the same be for any bet or wager or not, shall be deemed and adjudged a misdemeanor, and the parties concerned therein shall be punished accordingly.

Racing within half a mile of a court a misdemeanor.

VII. *And be it further enacted*, That every person who shall raffle for any sum of money, goods or chattels, shall for every such offence be liable to pay the sum of two dollars, to be recovered before any court having cognizance thereof, with costs of suit, and every person who shall set up any money, goods or chat-

Raffling, &c. penalty on. vide act "to prevent excessive and deceitful gaming." page 152.

tels to be raffled for, shall be liable to pay the sum of ten dollars, to the use of the poor of the town in which any such offence shall be committed, and it shall be the duty of the overseers of the poor of such town, and they are hereby authorised to prosecute in their own name therefor.

TWENTY-SEVENTH SESSION.

CHAP. XLI.

An ACT to incorporate a Society for the Promotion of Useful Arts.

Passed April 2d, 1804.

[W. v. 3. 604.]

[This society was *originally* instituted March 12, 1793, under the name of "The society for the promotion of agriculture, arts and manufactures," *vide* K.&R. v. 2. 525, sess. 16, ch. 59. Its general importance, and its intimate connexion with the legislature, whose members are *ex officio*, honorary members of this institution, seem to require the publication of this act.]

Recital.

WHEREAS the institution of a society calculated to promote, collect and preserve the knowledge of useful arts, is intimately connected with the public welfare and prosperity: Therefore,

Society incorporated.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That all such persons who shall, at the time of the passing of this act, be members of the society for the promotion of agriculture, arts and manufactures, and such other persons who shall from time to time become members of the society hereby intended to be incorporated, and shall within ten months after the passing of this act, signify their intention in writing, subscribed by them respectively, to Samuel L. Mitchell or Benjamin De Witt, the present secretaries of the said society, to become members of the society, hereby intended to be incorporated, and shall pay to either of them two dollars for the use of the said society, shall be and hereby are, constituted a body corporate and politic by the name of "The Society for the promotion of Useful Arts;" that by that name the said society shall have perpetual succession; and that the said society and their successors shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts and in all actions, suits, matters and causes whatsoever, and to purchase, take, receive, hold and enjoy any real or personal estate, in fee simple or otherwise, and the same to lease, sell, dispose of and convey, for the purpose of the better enabling them to carry into effect such measures as to the said society shall seem best calculated to promote agriculture, arts and manufactures within this state: *Provided,* That the clear annual value of such real and personal state shall not exceed the sum of two thousand five hundred dollars: That the said society shall have a common seal, which may from time to time be changed or altered at its pleasure.

Name of incorporation.

Provided.

II. *And be it further enacted*, That the said society shall, from time to time, for ever hereafter, have power to make, constitute, ordain and establish such bye-laws and regulations as they shall judge proper, for the election of their officers, for prescribing their respective functions, and the mode of discharging the same; for the admission of new members into the said society; for the government of the officers and members thereof; for ascertaining an equal annual rate of contributions towards the funds thereof, for regulating the times and places of meeting for managing the affairs of the said society and for suspending or expelling such members of the said society as shall neglect or refuse to comply with the bye-laws and regulations thereof, so as such bye-laws and regulations shall not be repugnant to the laws of the United States or of this state.

General power.

III. *And be it further enacted*, That a president and one or more vice-presidents, nine counsellors, two or more secretaries, a treasurer, and such other officers as the said society shall by any bye-law, from time to time appoint, shall be elected by a plurality of votes of the members of the said society present at any election: That such election shall be annually held in the senate chamber, or at such other place as the said society shall from time to time by bye-law direct and appoint, on the Tuesday next succeeding the day on which both houses of the legislature shall have been formed, ready to proceed to business, after the first day of January in every year: That the said officers shall respectively hold their offices until the next annual election day, or until others shall be elected in their stead: That if the annual election shall not be held at any of the days for that purpose appointed, it shall be lawful to make such election at any other day; and that the president, or one of the vice-presidents, with any twelve or more of the said society, meeting at the place designated for that purpose by any bye-law, shall constitute a legal meeting of the said society.

Officers of the society.

Quorum.

IV. *And be it further enacted*, That the books, papers, monies and effects of the society for the promotion of agriculture, arts and manufactures, shall be and the same are hereby with the approbation, and at the instance of the last mentioned corporation, vested in the said society for the promotion of useful arts, from and after the fourth day of May next, on which day the corporation aforesaid expires by its own limitation.

Books, &c. of former society vested in this.

V. *And be it further enacted*, That the members of the legislature shall in that capacity be honorary members of the said society; but shall not vote at elections, or have any voice in the disposition of the funds of the said society.

Members of the legislature honorary members.

VI. *And be it further enacted*, That Robert R. Livingston shall be the president, and Ezra L'Homedieu the vice-president of the said society, until the second annual election day.

First president and vice-president.

TWENTY-EIGHTH SESSION.

CHAP. XL.

An ACT to amend the Act, entitled "An Act for the Promotion of Useful Arts."

Passed March 16, 1805.

[W. v. 4. 60.]

Time in first
clause extend-
ed.

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That the term of ten months, mentioned in the first enacting clause of the act hereby amended shall be and the same is hereby continued and extended until the tenth day of February next.

A president
pro hac vice
may be ap-
pointed by
thirteen or
more mem-
bers.

II. And be it further enacted, That in case of the absence of the president and vice-president, from any meeting of the said society, at the time and place to which it shall have been previously adjourned, or have been appointed to meet, it shall be lawful for any thirteen or more of the members present at such meeting, to elect by plurality of votes, a president for the meeting, and the members so met, shall thereupon constitute a legal meeting of the said society.

TWENTY-SEVENTH SESSION.

CHAP. IV.

An ACT ratifying a certain Article proposed by Congress as an amendment to the constitution of the United States of America.

Passed February 11th, 1804.

[W. v. 3. 466.]

WHEREAS by the fifth article of the constitution of the United States of America, it is provided, that the congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to the said constitution, which shall be valid to all intents and purposes as part of the said constitution when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode may be proposed by congress.

And whereas, in the first session of the eighth congress of the United States of America, begun and held at the city of Washington, in the territory of Columbia, on Monday the seventeenth day of October, one thousand eight hundred and three, it was resolved by the senate and house of representatives of the United States of America, in Congress assembled, two thirds of both houses concurring, that in lieu of the third paragraph of the first section of the second article of the constitution of the United States, the following be proposed as an amendment to the consti-

tution of the United States, which, when ratified by three fourths of the legislatures of the several states, shall be valid to all intents and purposes, as part of the said constitution, to wit: The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves: they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the greatest number not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot the president; but in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice; and if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president shall be vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice, but no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States. And whereas the legislature of this state have considered the said article, and do agree to the same: Therefore,

BE it enacted by the People of the State of New-York represented in Senate and Assembly, That the said article shall be, and the same is hereby ratified by the legislature of this state.

An ACT for the appointment of Gaugers.

Passed April 9th, 1804.

[W. v. 3. 639.]

Gaugers to be appointed.

87 Ed. 3. st. 1. c. 8

81 Ed. 3. st. 1. c. 5.

1 R. 3. c. 13.

4 R. 2. c. 1.

23 H. 6. c. 16.

29 H. 4. c. 14.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That it shall be the duty of the person administering the government of this state, by and with the advice and consent of the council of appointment, to appoint one or more gaugers in such of the counties of this state, as in their opinion they shall from time to time deem necessary; and it shall be the duty of the said gaugers, upon application made to them or either of them, to gauge all casks containing molasses, and all casks containing any spirituous liquor distilled in the county in which they reside, and to mark the number of gallons contained in such casks, and the name of the county where the same has been distilled, together with his name on one of the heads of each cask so gauged, and for which services the said gaugers shall be paid six cents for every cask so by him gauged and marked.

To take an oath of office.

II. *And be it further enacted,* That the said gaugers appointed as aforesaid, shall, before they or either of them enter upon the duties of his or their office, respectively take and subscribe an oath before one of the justices of the peace of the county where he shall reside, well and faithfully to perform the duties required of him by this act without favor or partiality, and deposit the same in the office of the clerk of the county in which he resides.

THIRTIETH SESSION.

CHAP. XXXVIII.

An ACT relative to Turnpike Companies.

Passed March 13, 1807.

[W. v. 5. 50.]

Turnpike companies, their rights.

1 Geo. 3 c. 40
7 Geo 3 c. 42

Commissioners to furnish

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That all persons as shall hereafter be incorporated by act of the legislature of this state, for the purpose of making a turnpike road, shall be a body corporate and politic, by the name which shall be given by that act, and by that name they shall be capable in law to purchase, have, hold, enjoy and retain to them and their successors, lands, tenements and hereditaments, goods, chattels and effects of every kind whatsoever, to the amount prescribed by such act: *Provided,* That such estate, as well real as personal, so to be purchased and held, shall be necessary to fulfil the end of the corporation therein enacted and made.

II. *And be it further enacted,* That each of the persons, who

shall be named in such act commissioners for receiving subscriptions, shall furnish himself with a book, which shall be kept open for that purpose during two years, and that every subscriber on such book shall be bound to pay to the president and directors, so to be incorporated, the sum which shall be fixed by such act of incorporation, as the amount of one share for each share which he shall subscribe, at such time and place as the said president and directors shall from time to time require, except one-tenth part thereof, which shall be paid to the commissioner with whom the subscription is made at the time of subscribing; that as soon as one-sixth part of the whole number of shares which shall be fixed by such act as the capital of the said corporation shall have been subscribed, the said commissioners shall, by advertisement, to be published in two of the public newspapers printed nearest the route of the said road, giving at least thirty days notice of the time and place, when and where the said subscribers shall meet to choose directors; and at the day fixed for the said meeting the subscribers present shall choose by ballot nine stockholders, to be directors of the concerns of the said corporation for one year, and in such election the said commissioners, or such of them as are present, shall preside; that every succeeding election shall be held on each succeeding year on the same day on which the first election shall be made; and at the first and every succeeding election the stockholders present shall, by plurality of votes, elect three persons to preside at the then next succeeding election of directors, and the persons presiding at any election, shall, immediately after receiving the ballots, openly estimate the votes, and thereupon make and subscribe a certificate of the result of such election, and, after the first election, make return thereof to the president and directors at their next meeting after such election; that every stockholder shall, either in person or by proxy, at every such election, be entitled to one vote for every share he shall hold to the number of ten shares, and one additional vote for every five shares he shall hold above the number of ten shares; that if such election shall not be held on any of the said annual election days, it shall be lawful to make such election at any other day, to be appointed for that purpose by the said president and directors, in like manner, and with like effect, as if the same had been held at the usual time; and the directors in office shall, in that case, be incapacitated after the said anniversary election day, from performing any act as directors, other than such as may be necessary to give such election effect; that any five of the said directors shall be a quorum, and capable of transacting the business of the said corporation, and any act of the majority of the directors so met, shall be binding on the said corporation; and after every such election the said directors elected, shall, immediately after having met, proceed to elect by ballot one of their number for president; and the said president and directors may meet, from time to time, at such place as they may find expedient and direct; and they shall have the power to make such by-laws, rules, orders and regulations, not inconsistent with the constitution or laws of this state, or of the United States, as they shall deem necessary for the well ordering the affairs of the said corpo-

books for subscription and how to be opened and signed what time.

1 Caines' Rep. 381.

1 Caines ca. in error, 86.

What portion to be paid on subscription.

Directors how and who to be chosen.

Who to preside at the elections.

Anniversary of elections, when, and how conducted.

Number of votes each stockholder entitled to.

Elections not held on anniversary day provided for.

Quorum of directors.

President to be chosen.

General powers of directors.

**Vacancies
how filled.**

ration; that in case of vacancy by death, resignation or otherwise, in the office of director, the other directors in office may, by a majority of votes, supply such vacancy until the next annual election day; that whenever the president shall be absent from any of the meetings of the directors, the directors present, may, by plurality of votes, appoint another of their number president for the meeting, and they shall and may proceed and transact the business of the said corporation in like manner as if the president was present; and at the first meeting of the first directors, to be chosen as aforesaid by the stockholders, the said commissioners above named shall deliver their respective subscription books, and pay over the monies received by them respectively on such subscriptions, to the president and directors of the said corporation; and the said president and directors may continue to receive subscriptions to the stock of the said corporation until the whole number of shares allowed to be subscribed shall be subscribed, and shall have power to appoint such officers, agents, clerks, artists, workmen and others under them, as shall be necessary for executing the business of said corporation.

Commissioners when to deliver over books.

Directors may continue receiving subscriptions.

May appoint their officers, agents, &c.

Route of turnpike road, how to be laid out.

Description thereof to be filed.

Compensation to commissioners for laying out route, &c.

Directors may agree for the land necessary for the road, &c.

In case of disagreement with owner, damages how to be ascertained, &c.

III. *And be it further enacted*, That it shall be the duty of three commissioners, not interested in any turnpike road, and not living in any county through which such road shall run, who shall be nominated and appointed by the person administering the government of this state, or any two of them, to lay out the road directed by such act of incorporation, according to the best of their judgment and understanding, without favor or partiality, in such manner that the object of the corporation and the general interest of the public shall in the best manner be effected; and it shall be the duty of the said commissioners to deposit and cause to be filed in the office of the clerk of every county through which the said road shall pass, an accurate map of the survey of the same, in such county, designating the several particular points near or through which the same may pass; and each of the said last mentioned commissioners shall be allowed at the rate of three dollars per day, for every day they shall be necessarily employed in the same, to be paid, together with the expense of surveying and filing the said map, by the president and directors of the company so to be incorporated; and the president and directors of the company so to be incorporated, may contract and agree with the owners of the said lands, for the purchase of so much thereof as shall be necessary for the purpose of making the said road, and for the accommodation of gates and toll-houses, and all other works to the said road belonging; and in case of disagreement between the said parties, with respect to the value of the land so as aforesaid to be laid out, and the damages, if any, to be done to the said land, or if the owner or owners shall be feme covert, insane, under age, or out of the county, then and in either such case, it shall and may be lawful for the said president and directors to apply to one of the judges of the court of common pleas, in and for the county in which such land shall be situated, not interested in the said road, who is hereby authorised and required to nominate, and by an instrument signed by him, to appoint three appraisers, being freeholders of the said county,

and who shall not be inhabitants of any of the towns through which the said road shall pass, or interested in the said road or the land to be appraised; and it shall be the duty of the said president and directors to give notice to the said appraisers of their appointment, who, or any two of them, shall thereupon name a day for meeting on the land, and perform the duties required of them by this act, which day shall not be more than twenty nor less than ten days from such notice of their appointment; and the said president and directors shall give at least ten days notice to the owner or owners of such land, of the time when, and the place where the said appraisers shall meet, for the purpose of viewing the land, and assessing the damages, except in case the owner or owners shall labour under any of the disabilities aforesaid, or be absent, in either of which cases a copy of such notice may be left at the dwelling house of any of the parties, or other notorious place on the land through which the said road shall pass: and further, each of the said appraisers shall, before he proceeds to execute the trusts reposed in him by this act, take and subscribe an oath or affirmation in writing, before one of the justices of the peace of said county, for which he shall be so appointed, that he will without favor or partiality, estimate and assess the damages which may be sustained by the owner or owners of the land or improvements, which the said corporation may deem necessary to take and appropriate for said road; and the said appraisers shall proceed to view the premises, and having ascertained and determined the damages, shall make an inquisition under their hands and seals, or under the hands and seals of any two of them, describing the lands and stating the amount of the damages, (if any) which each or any of the owner or owners of any parcel of land used or to be used for such road, have sustained, or will sustain, which inquisition shall be acknowledged by the appraisers signing or proving the same before one of the judges aforesaid, and then by them filed, together with the affidavit aforesaid, in the office of the clerk of the county in which such land shall be situated, within thirty days after such view shall be had and inquisition made by the said appraisers; and the said clerk shall, at the expense of the said corporation, enter the same of record in the book kept by him for recording deeds; and the said president and directors aforesaid, upon paying the said several owners of the said lands, the several sums so assessed and awarded by the said appraisers in their said inquisition, shall and may have and hold to them and their successors and assigns forever, the lands and tenements in the said inquisition described: *Provided*, That nothing in this act contained shall be construed to authorise the said president and directors to enter upon such land for the purpose of making such road thereon, until they shall have paid such damages as may be agreed upon or appraised, according to the provisions of this act, if any person living on the land shall be authorised to receive the same, or if the same shall be lawfully demanded: *And provided further*, That nothing in this act contained, shall authorise any such president and director to take possession of any public highway, until such highway shall have been appraised and paid for in the same manner as is

Appraisers when and how to be convened.

Notice to owners of meeting.

Appraisers to take an oath.

And view the road. And make inquisition, and how inquisition proved and disposed of.

3 John.ca.107.

Proviso—Damages to be paid owner before taking the land.

Further proviso—Former highway, if required, how appraised and paid for.

directed by law in cases of taking private property; and the amount of the highway so appraised, shall be paid to the commissioners of highways for the town through which such road runs, to be by them applied in improving the roads in such town as aforesaid: *Provided always*, That whenever any appraisement shall be made of the lands, whereon any turnpike road shall be laid on any old road, the appraisers shall set down the value of the soil and the improvements, and the sums which have been paid by any town for making such improvements, in separate sums; and the sum for which the soil is appraised, shall be paid to the owner or owners of the soil, and the value of the improvements in making the old road, and the sums which shall have been so paid by any such town, shall be paid to the commissioners of highways of the town wherein such road shall be.

Further provisions.

Compensation to judge and appraisers, and of whom to be paid.

IV. *And be it further enacted*, That the said president and directors shall pay to the judge who shall appoint the appraisers to assess the damages aforesaid, one dollar for his services, and to each of the said appraisers, for every day necessarily attending to perform the duties required by this act, two dollars.

Road how to be made, dimensions, &c.

V. *And be it further enacted*, That the said president, directors and company, shall cause a road to be laid out not less than four rods wide, twenty-eight feet of which shall be bedded with stone, gravel, sound wood, or other hard substance, well compacted together, and of sufficient depth to secure a good and solid foundation to the same; and the said road shall be faced with gravel or broken stone of a depth not less than nine inches, in such a manner as to secure a firm and even surface, rising in the middle by a gradual arch; and the ditches on each side of the said road shall, wherever practicable, be so made as to render the passing of sleighs therein easy, and where other roads shall intersect said turnpike road shall be so formed as that carriages may conveniently go on and off said turnpike road: *Provided nevertheless*, That where, on account of the steepness of side hills or rocks, which render it impracticable in the opinion of the commissioners in any point or place thereof, to make and finish the said road of the full width as above described, it shall and may be lawful for the said president and directors to cause the same to be made and finished of such less width as may be practicable, without a ditch on the lower side, but in no place, however, to be contracted of less width than twenty-four feet: *Provided*, The lower side of such road, where the same shall not be of its full width, shall be furnished with a strong and sufficient fender or railing of the height of at least four feet above the surface of the road along which the same shall be constructed.

Provide, where side-hills and rocks occur.

Further provisions, as to a railing, &c. when necessary.

Road, how to be inspected, and when gates &c. allowed to be established.

VI. *And be it further enacted*, That as soon as the president and directors shall have completed the said road, or any ten miles thereof, it shall be lawful for the said president and directors to give notice thereof to the person administering the government of this state for the time being, who shall thereupon forthwith nominate and appoint three discreet freeholders, not interested in any turnpike road, to view the same, and report to him in writing, whether such part of the said road is completed in a workmanlike manner, according to the true intent and meaning

of this act ; and if the report shall be in the affirmative, then it shall be the duty of the person administering the government of this state, and he is hereby required by licence under his hand and the privy seal of this state, to permit the said president and directors to make and erect so many gates and turnpikes, across and upon the said road, as will be necessary and sufficient to collect the duties and tolls herein after granted, to the said corporation, from all persons travelling or using the same.

VII. *And be it further enacted*, That as soon as the whole, or any part of the said road shall be completed, and permission so as aforesaid granted, to erect a gate or gates and turnpikes upon and across the same, it shall and may be lawful for the said president and directors to appoint toll-gatherers, to collect and receive of and from all and every person and persons using the said road, at each and every of the said gates, such tolls and duties, for every score of hogs or sheep for every score of cattle, horses or mules for every chair, sulkey or chaise with one horse for every horse rode for every led or driven horse for every chariot, coach, coachee or phaeton for every cart drawn by one horse for every stage, waggon, or other four wheeled carriage drawn by two horses, mules or oxen and for every additional horse, mule or ox ; for every cart drawn by two oxen and for every additional horse, mule or ox ; for every sleigh or sled if drawn by two horses, mules or oxen, and in like proportion if drawn by a greater or less number of horses, mules or oxen, as shall hereafter be allowed and authorised by any act of incorporation, hereafter to be granted pursuant to this act ; and it shall and may be lawful for any toll-gatherer to stop and detain any person riding, leading or driving any horses, cattle, sheep or hogs, sulkey, chair, phaeton, chaise, waggon, sleigh, sled, or other carriage of burden or pleasure, from passing through any of the said turnpike gates, until they shall have respectively paid the toll so to be allowed as aforesaid : *Provided*, That nothing in this act shall be construed to entitle the said corporation to demand or receive toll at any gate, of or from any person passing to or from public worship or a funeral, to or from a grist-mill for the grinding of grain for his family's use, or to or from a blacksmith's shop to which he usually resorts, or from any person residing within one mile of the said gate, or from any person or persons who are entitled to vote, when going to or returning from town meeting or election, for the purpose of giving a vote, or from any person going for a physician or midwife or returning, or from a juror or witness going to or returning from court, having been legally summoned or subpoenaed, or from any troops in the service of this state or of the United States, or from any person going to or returning from any training, where by the laws of this state they are required to attend : *And provided also*, That not more than one-half of the above toll shall be demanded or received from any waggon or other carriage passing upon the said road, the tire or track of the wheel whereof is six inches wide, nor more than one-fourth of the above toll from those of nine inches wide, and all carriages the tire or track of the wheel whereof is twelve inches wide, shall pass said road free,

Rates of toll.

1 Cairnes Rep: 182.

Authority to toll-gatherers to stop persons not paying, &c.

Proviso, persons exempt from toll.

2 John. Rep: 180.
3 John. Rep: 360, 367.

Further proviso, in what cases half toll to be demanded only of waggons, &c. of a certain description.

A printed list of rates of toll to be kept, and where.

without paying any toll whatever ; and that the president and directors shall cause to be affixed and kept up at or over each gate, in some conspicuous place where it may conveniently be read, a printed list of the rates of toll which may be lawfully demanded.

Mile-stones to be erected.

VIII. *And be it further enacted*, That the said corporation shall cause mile-stones or posts to be erected and maintained, one for each mile of the said road, and on each stone or post shall be fairly and legibly marked or inscribed, the distance the said stone or post is from the place of the commencement of the said road, together with a continuation of the distance from any city or town, where such road shall commence, at the end of any other road or highway, which has mile-stones, with such distance marked thereon ; and shall also erect guide-posts at the intersection of all public roads, leading into or from the said turnpike,

Also guide-posts.

on which shall be inscribed the name of the town to which such intersecting road leads, in the direction to which the hand on the same points ; and if any person shall wilfully break, or cut down, deface, or injure, any of the said mile-stones or posts, so to be erected, or shall wilfully break, or throw down any of the said gates or turnpikes, or shall dig up or spoil any part of the said road, or any thing thereunto belonging, or shall forcibly pass either of the said gates, without having previously paid the legal toll, such person or persons shall, for every such offence or injury, forfeit and pay the sum of twenty-five dollars ; to be recovered by the said corporation, for their use, in an action of debt, before any justice of the peace of the county where the offence shall be committed, or where the offender may be found. And if any person or persons shall, with his team, carriage, or horse, turn out of the said road, or pass either of the said gates on ground adjacent thereto, and again enter on said road, having passed the said gate or gates, to avoid the payment of the toll due by this act, such person or persons shall forfeit and pay a fine not exceeding five dollars, to be recovered in like manner by the said corporation, to their own use with costs of suit.

Penalty on defacing or injuring them.

Or for avoiding the gates and payment of toll.

Penalty on toll gatherer for delay or extortion.

IX. *And be it further enacted*, That if any toll-gatherer shall unreasonably delay or hinder any traveller or passenger, at either of the said gates, or shall demand and receive more toll than by this act is established, he shall, for every such offence, forfeit and pay five dollars, to be recovered by the person so unreasonably detained, for his own use, with costs of suit, in any court having cognizance thereof : *Provided always*, That if no goods or chattels can be found to satisfy such judgment and costs, then, and in such case, the said corporation shall pay the same : *And provided further*, That in case property of the said company cannot be found wherewith to satisfy such judgment, that then and in that case, it shall and may be lawful for the person recovering such judgment, to recover and receive from the treasurer of such company, the amount thereof, together with all costs of suit, and to give such judgment in evidence upon the trial of such cause, against the said treasurer.

2 John. Rep. 410.

Proviso, when corporation to pay same, and

Further proviso, when treasurer liable to pay.

Shares declared personal property.

X. *And be it further enacted*, That the shares of the said turnpike road shall be deemed and considered to be personal estate,

and be transferable in such manner as the president and directors may direct.

XI. *And be it further enacted*, That the president and directors of the said corporation shall keep a just and fair account of all monies received, or to be received, by the several collectors of toll on said road, and shall make and declare a dividend of the clear profits and income, (all contingent costs and charges being first deducted) among the stockholders of the said corporation, on the first Tuesday of May and the first Tuesday of November, in every year, and shall publish the half-yearly dividend to be made of the said clear profits, among the stockholders, and the time and place when and where the same shall be paid, and shall cause the same to be paid accordingly.

Directors to keep account of monies received, and to declare dividends semi-annually.

XII. *And be it further enacted*, That the president and directors shall, within six months after the said road shall be completed, lodge in the office of the comptroller of this state, an account of the expenses thereof; and also annually exhibit to the comptroller a true account of the dividends arising from said toll, and the annual disbursements.

Account of expenses, where to be lodged and when and how to be made, and also of dividends.

XIII. *And be it further enacted*, That it shall and may be lawful for the president and directors to demand from the stockholders respectively, all such sums of money by them subscribed, or to be subscribed, at such time, and in such proportion, as they shall see fit, under the pain of forfeiture of their shares, and all previous payments thereon, to the said president and directors.

Stock how called in and forfeiture of shares for non-payment
2 John. Rep. 190.
3 John. Rep. 217.

XIV. *And be it further enacted*, That the legislature may dissolve the said corporation, when the income arising from the said toll, shall have paid and compensated the said corporation for all monies they may have expended in purchasing and making said road, together with an interest thereon of ten per cent per annum, besides the expense of repairing and taking care of said road; and thereupon the right, interest and property of the said corporation, shall be vested in the people of this state, and be and remain at their disposal: *Provided*, That if the said corporation shall not commence their operations within two years, and shall not within five years thereafter, complete the same, according to the true intent of this act, then and in either case, the act constituting the said corporation shall cease, and be void and of no effect. *And provided further*, That whenever any number of persons shall, after the first day of May next, be disposed to make application to the legislature, to be incorporated for the purpose aforesaid, it shall be the duty of such persons, or some one of them, to signify such their intention, by an advertisement, to be inserted for four weeks successively, before making such application, in one or more of the newspapers, printed in the county or counties through which such road is contemplated to be laid, and if no paper is printed in such county, then in the paper or papers printed in the county or counties nearest thereto; and shall also accompany their application with a map of said route, and the interference it may have with roads then in existence.

Corporation when to be dissolved,

and property of corporation vested then in the state, and provide as to the time limited for completing roads.

Further proviso. Applications for incorporation to be previously published, and how, and for what time.

XV. *And be it further enacted*, That no person, being a director of said turnpike road, shall directly or indirectly, contract for, or be concerned in any contract for the making or working of any part or portion of said road, during the time he is a director, as

Directors not to be contractors.

Contracts lim-
ited, and to be
laid before the
board.

aforsaid; and that it shall not be lawful for a contractor for the making of any part or portion of said road, to contract with any person or persons, other than the hiring hands, teams, carriages or utensils, for the making thereof, or making any part of said road, by him contracted for, or in which he is concerned as a contractor, unless such contract or contracts are laid before the board of directors, with the terms thereof, and shall be approved of by the said board of directors.

When road
is out of re-
pair, how
gates to be
thrown open.

XVI. *And be it further enacted*, That whenever complaint shall be made to any of the commissioners hereafter appointed for the inspection of turnpike roads in any of the counties of this state, that any turnpike road hereafter incorporated, or any part thereof in such county, is out of repair, it shall be the duty of such commissioner to whom such complaint is made, to repair to such part of the said road, and to view the same, and if the same shall, in the opinion of such commissioner, be out of repair, then the said commissioner shall give notice in writing of such defect to the toll-gatherer, or person attending the gate nearest to the place so out of repair in the county, for which such commissioner is or may be appointed, and shall also in his discretion in the said notice order such gate or gates to be thrown open, and the gate or gates so ordered to be thrown open, shall immediately after the service of such notice as aforsaid be opened and shall remain open and no toll shall be demanded for passing the same until a certificate is received by the person keeping such gate, under the hand of one of the commissioners aforsaid, in such county, that such road is in sufficient repair, and granting permission to shut such gate; and if such keeper of the gate as aforsaid, shall not immediately after receiving a notice for that purpose as aforsaid, open such gate and keep the same open until permission to shut the same is obtained as aforsaid, or if he shall hinder or delay any person or persons in passing the said gate, or shall take or demand toll from any person or persons passing the same, after the notice to throw open such gate has been given as aforsaid, and before such permission as aforsaid hath been granted to shut the same, the toll-gatherer of such gate, shall for every such offence forfeit and pay to the party aggrieved, the sum of ten dollars, to be recovered by an action of debt, in the name of the party aggrieved, for his own use, before any justice of the peace of the county in which such gate is situate, in which action it shall be sufficient for the plaintiff to declare that the defendant is indebted to him in the sum of ten dollars, for demanding and taking toll at such gate as aforsaid, or delaying or hindering such plaintiff in passing such gate, (as the case may be) contrary to this act, and it shall be lawful for the plaintiff in such action, if judgment shall be obtained in his favor, to have execution without delay in the form now in use for the recovery of debts under twenty-five dollars, on which execution it shall be lawful to imprison the defendant until the amount of such judgment with costs shall be paid. And the commissioners aforsaid shall for all services performed under this act, be entitled to receive from the president, directors and company of such turnpike road, two dollars for every day they are employed thereon, which shall be paid by the toll-gatherer of the gate nearest to

Penalty for
opening to
open gates or
thereafter de-
manding toll.

Compensation
to commis-
sioners.

the place where such service is performed, out of the monies collected at such gate for toll, and such toll-gatherer is hereby made liable for the payment thereof: *Provided always*, That every such complaint, shall be made in writing and set forth what part of said road is out of repair.

Proviso.
Complaints to be in writing.

CHAP. LXVI.

An ACT for the Inspection of Lumber.

Passed March 27, 1807.

[J.&V. v. 2. 290.—Gr. v. 2. 123, 315.—W. v. 5. 81.]

I. *BE it enacted by the people of the State of New-York, represented in Senate and Assembly*, That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall appoint from time to time, whenever it shall be necessary, not less than seven nor more than ten inspectors of lumber for the city and county of New-York; two inspectors for the city of Albany; one inspector for the city of Hudson; one inspector for the landing of Kinderhook, and as many more in other parts of this state as may be found necessary; and in case of death, resignation or otherwise, it shall be the duty of the person administering the government of this state, for the time being, to fill such vacancy until the pleasure of the council of appointment be known: *Provided however*, That the present inspectors shall continue in office until others shall be appointed in their stead.

Inspectors of lumber to be appointed.

Vacancies how filled up

II. *And be it further enacted*, That the said inspectors, before they enter on the duties of their office, shall take the following oath, viz. "I do solemnly swear, that I will faithfully, truly and impartially, according to the best of my skill and judgment, execute, do and perform the office and duty of an inspector of lumber, agreeably to the laws of this state, relative to the same."

Their oath.

III. *And be it further enacted*, That no inspector shall employ any deputy to inspect in his name, neither shall they purchase or sell lumber, except they may purchase for their own use, on pain of forfeiting their office.

Not to employ deputies.

IV. *And be it further enacted*, That it shall be the duty of said inspectors to measure the full length and bigness of raft timber and spars, except in cases where, by express agreement, they are required both to measure and inspect, and in such cases there shall be no other deduction made, than what, in their judgment, the exact quantity of unsound timber contained therein; and said inspectors shall render to their employers such bills as shall express whether the lumber has been measured only, or whether it has been both measured and inspected, together with the number of feet contained therein.

Timber, how inspected.

V. *And be it further enacted*, That if any person or persons shall ship on board any ship or vessel for exportation to foreign market, any lumber, that has not been inspected by some of said

Penalty for shipping uninspected lumber.

9 W. & M.
sess. 2. c. 4.
73 & 74 Car. 2.
c. 11.
73 Car. 2. c. 18.

On persons
inspecting
without being
appointed by
law.

Now marked.

Their com-
pensation.

Former act
repealed.

inspectors, he or they shall forfeit and pay for every thousand feet superficial measure, the sum of two dollars and fifty cents, and for every thousand feet cubic measure, the sum of five dollars, to be recovered with costs of suit, in any court having cognizance of the same, the one half to the use of the poor in the city or town in which such suit may be had, and the other half to the prosecutor; and if any person, other than those appointed by law, shall be convicted of practising the duties of inspectors of lumber, to the injury of said inspectors, such offender shall forfeit to the inspectors ten dollars for every such offence, to be recovered as aforesaid.

VI. *And be it further enacted*, That the said inspectors shall mark with a marking iron, on all timber by them inspected, the number of feet contained therein, either in cubic or superficial measure, except on mahogany, red cedar and live oak, the number of feet in which shall be expressed in their bills, severally annexed to the number of each log, and all raft timber shall be numbered, and the bills made in like manner; and the said inspectors shall be entitled to receive as a compensation for their services, the following sums, viz.—On all raft timber, inspected and measured, for every ton consisting of forty cubic feet, fourteen cents; on all raft timber, only measured, for every ton, six cents; for every thousand feet, superficial measure, of boards, plank and scantling, thirty-seven and an half cents; for every thousand feet, superficial measure, of mahogany, one dollar; and in all cases where their fees cannot be calculated by reference to this act, the said inspectors may receive whatever compensation their employers may freely consent to pay: *Provided*, The inspectors first make known the fees allowed by this act: *Provided also*, That the purchaser shall pay one half of said inspection, and the seller the other half.

VII. *And be it further enacted*, That the act, entitled "An act for the inspection of lumber," passed the twenty-first day of March, one thousand eight hundred and one, shall be and is hereby repealed.

THIRTY-FIRST SESSION.

CHAP. CXXXV.

An ACT relative to the Jurisdiction of this State, over the Territory therein mentioned.

Passed April 6, 1808.

[V. S. v. 1. 42†, 512, 605, 608.—W. v. 5. 313.]

New-Jersey—
certain claims
set up, and
proposals
made by its
legislature.

WHEREAS the legislature of the state of New-Jersey, by an act passed on the second day of November, in the year 1806, entitled "an act concerning the eastern boundary of the state of New-Jersey," after reciting that king Charles the second had granted to James, duke of York, sundry tracts of land in America, whereof the now state of New-Jersey and the now state of New-York were then part, together with all the islands, soils, ri-

vers, waters, harbors, royalties and certain powers of government in and over the same; and that the duke of York granted the then province and now state of New-Jersey, being described in the said grant as a tract of land adjacent to New-England, and lying and being to the westward of Long-Island and Manhattan's Island, and bounded on the east in part by the main sea, and in part by Hudson's river, together with the said royalties and powers of government over the same, to John Lord Berkeley, and sir George Carteret, and their assigns, who used and exercised all such royalties and powers of government until they surrendered the same unto the crown of Great-Britain, and that afterwards the said respective provinces of New-Jersey and New-York became several independent sovereign states, in virtue whereof, and the premises aforesaid, the said state of New-Jersey became vested with full right and lawful authority to exercise jurisdiction in and over the said Hudson river, and the said main sea, and all the ports, harbors and havens, lying adjacent to and along the Jersey shore and coasts in such manner as belongs to a sovereign and independent state to use and exercise: and that it was highly expedient that the state of New-York and the state of New-Jersey should enter into a mutual agreement, in respect to the exercise of their several and respective jurisdictions, and their several claims of territory, whenever they may be supposed to interfere, in such way as might best promote mutual accommodations, harmony and good understanding between them forever; to these ends therefore, Aaron Ogden, William S. Pennington, James Parker, Lewis Condict and Alexander C. M'Whorter, esquires, or a majority of them, were, by the said act, appointed commissioners, with full power and authority, in behalf of New-Jersey, to meet and make final agreement in regard to the premises, with commissioners on behalf of this state, to be appointed by a law of this state, with like powers, if to them it should seem expedient, in such manner as finally to settle the limits and extent within which they shall exercise their right of jurisdiction respectively, in and over all the waters lying and being between the shores of the said states respectively: *And further*, Finally to settle and determine the eastern boundary line of the state of New-Jersey, as to them by mutual agreement might seem just and reasonable, which agreement, in writing, signed and sealed by the said commissioners respectively, if made on or before the fifteenth day of November then next, should become binding on the said state, when confirmed by the respective legislatures of New-York and New-Jersey; and the said act having been transmitted by the governor of the said state of New-Jersey, to the governor of this state, and by him laid before the legislature, they thereupon, by an act, passed on the third day of April last, entitled "an act respecting a claim for the extension of the eastern boundary of the state of New-Jersey," appointed Ezra L'Hommiedieu, Samuel Jones, Egbert Benson, Simeon De Witt and Joseph C. Yates, esquires, or a majority of them, commissioners with full power and authority to meet, confer and agree with the said commissioners of the state of New-Jersey, respecting the said claims of the said state of New-Jersey; *Provided*, That such agreement

New-York
recital of act
appointing
commissioners
to confer on
the said claims.

Commission-
ers report.

should not be binding on this state, unless made on or before the said fifteenth day of November, and confirmed and ratified by the respective legislatures of New-Jersey and New-York, within one year after it shall be made. And whereas the said commissioners, appointed by the said states respectively, met at Newark, in the state of New-Jersey, in the month of September last, and conferences and proceedings were then and there had between them respecting the said matters so referred to them, and they afterwards separated without any such agreement, as is above intended, taking place between them; and the said commissioners on the part of this state, have thereupon made their report of the said conferences or proceedings, to the governor of this state, by whom the same hath been laid before the legislature, and inasmuch as it contains or states, "that the commissioners on the part of the state of New-Jersey, claim in behalf of their state, as comprehended in the grant from the duke of York to Berkeley and Carteret, Staten-Island, the Hudson *ad fitem aqua*, and all the ports, harbors, bays and arms of the sea, lying contiguous to the eastern shore of New-Jersey, and *infra fauces terræ*, as far down as Sandy-Hook;" and inasmuch as it further contains or states, "that New-York has, coeval with the commencement of the colonial governments of the two states, hitherto actually and constantly exercised or possessed the jurisdiction over the river Hudson and Staten-Island, and the bay between it and Long-Island, as a portion of her rightful territory," as by the said report may, among other things more fully appear; and the legislature having duly considered the said report, have thereupon judged it advisable, for the preservation and maintenance of such jurisdiction over the said territory, consisting of the said river, island and bay, above specified to make such provisions as are hereinafter contained.

New-York—
Jurisdiction of,
to be preserv-
ed.

I. *BE it therefore enacted by the People of the State of New-York, represented in Senate and Assembly,* That it shall be and it is hereby declared to be the duty of the person administering the government of this state, for the time being, and all subordinate officers, according to their respective powers, authorities and functions, and by all lawful ways and means, to preserve, maintain and defend the jurisdiction of this state in and over the said territory, until this state shall be evicted thereof by due course of law.

Misdemeanor
and high
crimes, per-
sons offending
against this
act, guilty of.

II. *And be it further enacted,* That if any person shall, within the said territory, oppose, disturb or hinder any public officer of this state, in the execution of his office, or do any other unlawful act as under the authority of the state of New-Jersey, or by colour or pretext, that the place where such act was done, was not within the jurisdiction of this state, any person so offending, shall be deemed guilty of a high crime and misdemeanor against this state, and shall, on conviction, be punished by fine or imprisonment, or both, in the discretion of the court before whom the conviction shall be had.

Offences,
where and be-
fore what
courts cogni-
zable.

III. *And be it further enacted,* That the whole of the said river Hudson, southward of the northern boundary of the city of New-York, and the whole of the said bay between Staten-Island

and Long or Nassau-Island, shall so far forth be deemed to be within the jurisdiction of the city and county of New-York, as that all offences against this act shall be cognizable in the courts held in and for the said city and county : *And further*, it is hereby declared that the courts of oyer and terminer and general sessions of the peace, held in and for the said city and county, shall have cognizance of the said offences.

IV. *And be it further enacted*, That if at any time, any suit or other proceeding shall be instituted or commenced by the state of New-Jersey, against this state, to recover the said territory, or any parcel thereof, the person administering the government of this state, for the time being, shall retain and employ counsel, and otherwise provide for the defence of this state, in every such suit or proceeding, as shall be requisite ; and in order to defray the expense thereof, that he may from time to time draw from the treasury of this state, a sum or sums in the whole not to exceed three thousand dollars.

Counsel to be employed to defend suits which may be instituted by New Jersey.

Monies appropriated to defend suits.

V. *And be it further enacted*, That the period which expired on the fifteenth day of November, mentioned in the above act of the legislature of this state, shall be and hereby is extended to the first day of January next, and the power and authority granted in and by the said act to the said commissioners therein named, are hereby revived and continued accordingly ; in addition, however, to the proviso contained in the said act, it is hereby further provided and declared, that it shall be expressly provided in the agreement, if any, which may be made between the said commissioners, and the commissioners on the part of the state of New-Jersey, that nothing in such agreement contained, shall be construed to enable or authorise the United States to make or establish a port or ports on or within the said river Hudson, or the said bay between Staten-Island and Long or Nassau-Island, otherwise than as within the limits or territory of this state.

Powers of commissioners revived, under certain limitations.

CHAP. CCXXVI.

An ACT for the Punishment of Public Defaulters.

Passed April 11, 1803.

[W. v. 5. 408.]

BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That if any officer of this state, entrusted with public monies by virtue of such office, shall fraudulently or corruptly apply any of the same to any purpose of purposes incompatible with the duties of his office, whereby the people of this state shall sustain any loss, the officer so acting, shall be considered guilty of a high misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding ten thousand dollars, or imprisoned for a term not exceeding ten years, or sentenced to confinement at hard labor, in the state-prison, for a term not exceeding five years, in the discretion of the court having cognizance thereof, according to the nature and aggravation of the offence.

LAWS OF NEW-YORK,
THIRTY-SECOND SESSION.

CHAP. CLXXXV.

An ACT to amend the act, entitled "An act for the speedy Sale of the confiscated and forfeited Estates within this State, and for other Purposes therein mentioned."

Passed March 30, 1809.

[W. v. 5. 568.]

Appraisers
now appoint-
ed.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That in all cases mentioned in the first section of the act hereby amended, in which the party against whom the recovery is or shall be had, is thereby entitled to compensation for his improvements, it shall be lawful for either party, at any time after judgment, to apply to the court in which such judgment is or shall be had, for the appointment of appraisers, for estimating the value of such improvements.

Amount of ap-
praisement
when to be
paid.

II. *And be it further enacted,* That in all cases in which judgment has been obtained and an appraisement made, in conformity to the act aforesaid, the party in whose favor such judgment hath been had shall pay to the party entitled thereto the amount of such appraisement within six months after the passing of this act; and in all cases in which judgment shall hereafter be obtained, and in which the party against whom the recovery shall be had is entitled to compensation for his improvements, and in which the value of the improvements shall be ascertained as aforesaid, the party recovering the same shall pay to the person or persons entitled to such compensation the amount of such appraisement, within twelve months after such appraisement shall be made: and in default of such payment in either of those cases, it shall be lawful for the party against whom such recovery has been or shall be had, to apply to the persons by whom the valuation of such improvements hath been made, who are hereby required on such application to ascertain and appraise the value of such lands at the price they are worth at the time of such appraisement exclusive of the improvements made thereon, the amount of which last mentioned appraisement the defendant or tenant shall pay to the opposite party, within twelve months after the making thereof; and that the payment of such amount, or the tender and refusal thereof, shall be a full and effectual extinguishment of the right and title of the party to whom such payment or tender is made to the lands so recovered:

CHAP. CXCVI.

An ACT concerning the Clerks of the Supreme Court of this State, and for other purposes.

Passed April 6, 1810.

[W. sess. 33. 85.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That from and after the first day of June next, it shall be the duty of each of the clerks of the supreme court of this state, their deputy clerks, and sub-clerks, to keep an exact and regular account, in a book to be provided for that purpose, of all fees, perquisites and emoluments which such clerk of the supreme court is or shall from time to time be by law permitted or entitled to have and take, by virtue of the said office of clerk of the supreme court, and each of the said clerks of the supreme court, shall once in every quarter, exhibit an abstract of such account to the comptroller of this state; and such abstract shall specify the amount of money which such clerk shall have received in such quarter, and the comptroller after having examined and filed such abstract in his office shall certify to the treasurer the amount of money which according to such abstract shall have been received, and such clerk shall forthwith pay the same to the treasurer.

Clerks of supreme court, accounts in their offices how kept and monies how paid.

Clerks to account with Comptroller every quarter yearly

Clerks to pay into the treasury all monies received for fees.

II. *And be it further enacted,* That it shall be the duty of each of the said clerks of the supreme court, and they are hereby required once in every six months, to render a just and true account to the comptroller, of all fees, perquisites and emoluments which shall remain due and unpaid at the time of rendering such account, and the names and places of residence of the several persons from whom such fees, perquisites and emoluments are due, and it shall be the duty of the comptroller without delay to call on the several persons mentioned in such account, and who shall thereby appear to be indebted for clerk's fees, to settle the same; and he is hereby authorised to issue a notification to every such person, or in case of his death, to his heirs, devisees, executors or administrators, requiring them at such time as he shall think reasonable, not less than ninety, nor more than one hundred and twenty days, from the date of such notification, to pay to the treasurer of this state, the amount which shall be due for clerk's fees as aforesaid, and in default thereof, suits at the discretion of the comptroller shall be commenced for the same without further notice.

Clerks to render an account to the comptroller half yearly of monies due.

Comptroller, his duty in respect to accounts of fees put in his hands.

III. *And be it further enacted,* That each of the clerks of the supreme court and each of the deputy clerks and sub-clerks shall, previous to the said first day of June next, take and subscribe before one of the justices of the said court, the following oath, to wit:—"I ———, one of the clerks of the supreme court of judicature of the state of New-York, (or deputy clerk of the supreme court, or a sub-clerk in the office of the clerk of the supreme court) do solemnly swear and declare, that I will justly, faithfully and honestly, according to the best of my ability, perform the several duties enjoined on and required of me, by the act, entitled "an act concerning the clerks of the supreme court

Clerks, deputy and sub-clerks, form of oath to be taken by them.

of this state, and for other purposes," passed the sixth day of April, 1810, without any wilful omission, neglect or delay whatever."

Clerks, their
compensation.

IV. *And be it further enacted*, That from and after the said first day of June next, there shall be allowed and paid to the several clerks of the supreme court of this state, in lieu of all fees, perquisites and emoluments, provided for them by law, and which they are to account for and pay over in manner aforesaid, the following salaries, to wit :—To the clerk of the said court, keeping his office in the city of New-York, at and after the rate of three thousand dollars per annum as his compensation, and the further sum of one thousand six hundred dollars for clerk hire and office expenses :—To the clerk of the said court, keeping his office in the city of Albany, at and after the rate of two thousand two hundred dollars per annum, as his compensation, and the further sum of one thousand three hundred dollars for clerk hire and office expenses : and to the clerk of the said court, keeping his office in the village of Utica, in the county of Oneida, at and after the rate of two thousand dollars per annum, as his compensation, and the further sum of one thousand dollars for clerk hire and office expenses ; and which said several sums shall be paid quarter yearly, by the treasurer of this state, on the warrant of the comptroller, as the same shall become due.

[RESIDUE OF THIS ACT REVISED.]

THIRTY-SIXTH SESSION.

CHAP. XCIX.

An ACT to amend an act, entitled " An act concerning the Clerks of the Supreme Court of this State, and for other purposes."

Passed April 2, 1813.

[S. sess. 36. 155.]

Notice to be
published re-
lative to debts
due for servi-
ces done by
clerks of sup-
court.

I. *BE it enacted by the People of the State of New-York, re- presented in Senate and Assembly*, That the comptroller of this state be and he is hereby directed forthwith to publish a notice in a newspaper printed in each of the great districts, once in a week for six weeks successively, requiring all persons indebted to the people of this state for fees on account of services done by either of the clerks of the supreme court, to pay the sums in which they are respectively indebted to the treasurer of said state within twelve weeks from the date of said notice, which notice and demand shall be deemed a sufficient notice and demand, and an affidavit of such publication accompanying a copy thereof by the several printers who shall publish the same, taken before a commissioner authorised to take affidavits to be read in the said court, shall on the trial of any cause for the recovery of fees for services by the said clerks respectively, be received as conclusive evidence of the making such demand and publishing of such notice ; and the said comptroller is further directed to publish the like no-

ties and demand forthwith after each return made to him by said clerks, in conformity to the second section of the act hereby amended.

II. *And be it further enacted*, That if any person indebted as aforesaid shall not pay the amount due to the treasurer of this state within the time limited therefor by any notice hereafter to be published by the comptroller, he shall be liable thereafter to pay to the said people interest thereon at the rate of seven per cent per annum.

III. *And be it further enacted*, That the comptroller be and he is hereby directed to cause actions to be prosecuted for all monies which shall be unpaid for the services before mentioned, the accounts of which are now in his office, immediately after the expiration of the time limited in his first notice, and for all other monies becoming due at the expiration of every year thereafter: *Provided*, such account, with interest, shall amount to twenty-five dollars.

IV. *And be it further enacted*, That the several returns made by the respective clerks of said court, stating the amount due from each person named therein, or the certificate of the comptroller stating the amount due from any person therein mentioned, shall be prima facie evidence of the services performed and the amount due at the time such amount is returned to the comptroller: *And further*, That in any action prosecuted for the recovery of any such demand, the venue therein shall be laid in the county of Albany.

THIRTY-FOURTH SESSION.

CHAP. LXVII.

An ACT relative to incorporations for Manufacturing purposes.

Passed March 22d, 1811.

[S. sess. 34. 111.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That at any time within five years hereafter, any five or more persons who shall be desirous to form a company for the purpose of manufacturing woollen, cotton or linen goods, or for the purpose of making glass, or for the purpose of making from ore bar-iron, anchors, mill-irons, steel, nail rods, hoop-iron and ironmongery, sheet copper, sheet lead, shot, white lead and red lead, may make, sign and acknowledge, before a justice of the supreme court, a judge of the court of common pleas, or a master in chancery, and file in the office of the secretary of this state, a certificate in writing, in which shall be stated the corporate name of the said company and the objects for which the company is formed, the amount of the capital stock of the said company, the number of shares of which the said stock shall consist, the number of trustees and their names who

Penalty for neglecting to pay after such notice.

Comptroller directed to prosecute for monies due.

Return of clerks evidence of services performed.

Companies for manufacturing certain articles may be incorporated by filing a certificate in the secretary's office.

2 Caines cases in error, 137.
3 John. Rep. 304.
6 Geo. 1. c. 18.
22 Geo. 2. c. 27.
21 Jac. 1. c. 3.
2 W. & M. st. 2. c. 9.

shall manage the concerns of the said company for the first year, and the names of the town and county in which the manufacturing operations of the said company are to be carried on.

To be bodies corporate and politic 'or 30 years from the time of filing the certificate.

Their corporate rights.

9 John. Rep. 384.

11. *And be it further enacted*, That as soon as such certificate shall be filed as aforesaid, the persons who shall have signed and acknowledged the said certificate, and their successors shall, for the term of twenty years next after the day of filing such certificate, be a body politic and corporate, in fact and in name, by the name stated in such certificate, and by that name they and their successors shall and may have succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever; and they and their successors may have a common seal, and the same may make, alter and change at their pleasure; and that they and their successors, by their corporate name, shall in law be capable of buying, purchasing, holding and conveying any lands, tenements, hereditaments, goods, wares and merchandize whatever, necessary to enable the said company to carry on their manufacturing operations mentioned in such certificate.

Trustees to be annually elected.
9 John Rep. 117
Election when to take place and how conducted.

Each share to have one vote.

Vacancy in the office of trustee how filled.

Number of trustees not to exceed nine.

Company not dissolved by neglect to elect trustees on the day appointed by law.

11 Geo. 1. c. 4.

Capital stock not to exceed 100,000 dollars

III. *And be it further enacted*, That the stock, property and concerns of such company shall be managed and conducted by trustees, who, except those for the first year, shall be elected at such time and place as shall be directed by the by-laws of the said company, and public notice shall be given of the time and place of holding such election not less than ten days previous thereto, in the newspaper printed nearest to the place where the manufacturing operations of the said company shall or are to be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, and all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of the stock of the said company, and the persons having the greatest number of votes shall be trustees; and whenever any vacancy shall happen among the trustees by death, resignation or removal out of the state, such vacancy shall be filled for the remainder of the year in such manner as shall be provided by the by-laws of the said company: *Provided always*, That the number of trustees shall not exceed nine, and that they shall respectively be stockholders in such company.

IV. *And be it further enacted*, That in case it shall at any time happen that an election of trustees be not made on the day when by the by-laws of the said company it ought to have been done, the said company for that cause shall not be dissolved, but it shall and may be lawful on any other day to hold an election for trustees, in such manner as shall be directed by the by-laws of such company.

V. *And be it further enacted*, That the capital stock of such company shall not exceed one hundred thousand dollars;— and it shall be lawful for the trustees to call and demand from the stockholders respectively all such sums of money by them subscribed, at such time and in such proportions as they shall deem

proper, under pain of forfeiting the shares of the said stock-holders, and all previous payments made thereon, if such payments shall not be made within sixty days after a notice requiring such payment shall have been published in such newspaper as aforesaid.

VI. *And be it further enacted*, That the trustees of such company for the time being shall have power to make and prescribe such by-laws, rules and regulations as they shall deem proper respecting the management and disposition of the stock, property and estate of such company, the duties of the officers, artificers and servants by them to be employed, the election of trustees, and all such matters as appertain to the concerns of the said company, to appoint such and so many officers, clerks and servants for carrying on the business of the said company, and with such wages as to them shall seem reasonable : *Provided*, That such by-laws be not inconsistent with the constitution and laws of this state or of the United States.

VII. *And be it further enacted*, That the stock of such company shall be deemed personal estate, and be transferable in such manner as shall be prescribed by the laws of the company ; and that for all debts which shall be due and owing by the company at the time of its dissolution, the persons then composing such company shall be individually responsible to the extent of their respective shares of stock in the said company and no further ; and that it shall not be lawful for such company to use their funds, or any part thereof, in any banking transaction, or in the purchase of any stock of any bank, or in the purchase of any public stock whatever, or for any other purposes than those specified in such instrument as aforesaid.

VIII. *And be it further enacted*, That the copy of any certificate filed in pursuance of this act, and certified to be a true copy by the secretary of this state, or his deputy, shall together with this act, be received in all courts and places as legal evidence of the incorporation of such company.

CHAP. CLXXXVIII.

An ACT to provide for the improvement of the internal navigation of the State.

Passed April 8, 1811.

[S. sess 34. 334.]

WHEREAS a communication by means of a canal navigation between the great lakes and Hudson's river will encourage agriculture, promote commerce and manufactures, facilitate a free and general intercourse between different parts of the United States, and tend to the aggrandizement and prosperity of the country, and consolidate and strengthen the union : Therefore,

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That Gouverneur Morris, Stephen

Shares forfeited or non-payment of calls.

Powers of the trustees.

1 Ed. 3. st. 2.
c. 9.
15 H. 6. c. 6.
33 H. 8. c. 30.

Stock deemed personal estate and how transferable.

To what extent stockholders are responsible at the dissolution of the company.

Restriction on the application of the funds.

What to be received as evidence of the incorporation of a company.
8 John. Rep.
378, 404.

Preamble.

Commissioners appointed.

Van Rensselaer, De Witt Clinton, Simeon De Witt, William North, Thomas Eddy, Peter B. Porter, Robert R. Livingston and Robert Fulton shall be and hereby are appointed commissioners for the consideration of all matters relating to the said inland navigation ; and in case of the resignation or death of any of the said commissioners, the vacancy shall be supplied by the person administering the government of this state.

Commissioners, their powers

II. *And be it further enacted*, That the said commissioners, or a majority of them, shall be and hereby are empowered to make application in behalf of this state to the Congress of the United States, or to the legislature of any state or territory, to co-operate and aid in this undertaking, and also to the proprietors of the land through which such navigation may be carried, for cessions or grants to the people of this state, to be received by the said commissioners in their discretion ; and also to ascertain whether loans can be procured on advantageous terms on the credit of this state for the purpose aforesaid, and the terms on which the western inland lock navigation company would surrender their rights and interests to the people of this state.

Authorized to employ agents

III. *And be it further enacted*, That the said commissioners shall be and hereby are empowered to employ engineers, surveyors, and such other persons as in their opinion may be necessary in order to enable them to fulfil the duties imposed on them by this act, and to pay them for their respective services such sums as may be reasonable.

To make report to the legislature.

IV. *And be it further enacted*, That the said commissioners shall, and they are hereby required to report to the legislature at their next session an account of the whole of their proceedings.

Authorized to receive 15,000 dollars.

V. *And be it further enacted*, That the treasurer shall pay to the order of a majority of the said commissioners, out of any monies in the treasury not otherwise appropriated, any sum or sums not exceeding fifteen thousand dollars, and for which the said commissioners shall account to the comptroller of this state.

CHAP. CCXXXV.

An ACT for the relief of the Creditors of Corporations created by any Law of this State.

Passed April 9th, 1811.

[S. sess. 34. 435.]

President and directors of corporations dissolved to settle their concerns

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That upon the dissolution of any corporation already created or which may hereafter be created by any law of this state, the president and directors, or the managers of the affairs of the said corporation at the time of its dissolution, by whatsoever name they may be known in law, shall be the trustees of such corporation, with full power to settle the affairs, collect the outstanding debts and divide the monies and other property among the stockholders, after paying the debts

11 Geo. I. c. 4.
1 Lev. 237.
1 Bl. com. 511.
§12.
Co. Litt. 13.
3 Bl. com. 256.

due and owing by such corporation at the time of its dissolution, as far as such monies and property shall enable them.

11. *And be it further enacted*, That the persons constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property by the name of the trustees of such corporation, describing it by its corporate name, and shall be suable by the same name, or in their own names and individual capacities, for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts to the amount of the monies and property of such corporation at the time of its dissolution.

To recover debts, &c.

How far responsible for their debts.

THIRTY-FIFTH SESSION.

CHAP. CLXIV.

An ACT relating to the Salt Springs in the county of Onondaga.

Passed June 15, 1812.

[S. sess. 35. 298.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the superintendent of the salt springs in the county of Onondaga, shall be appointed by the legislature, and shall hold his office during their pleasure.— And in case of the death, resignation, or refusal to serve, of the superintendent, during the recess of the legislature, it shall be the duty of the person administering the government for the time being, to appoint his successor, who shall continue in office until the legislature shall make a new appointment.

Superintendent how appointed.

II. *And be it further enacted*, That every superintendent of the said salt springs shall, before he enters upon the duties of his office, and within thirty days after his appointment, execute a bond, with two substantial freeholders as sureties, to be approved of by the comptroller, to the people of this state, in the penal sum of twenty-five thousand dollars, conditioned that he shall well and faithfully perform the duties of his said office, and make a true report to the legislature on the first Tuesday in February, in every year, or within twenty days thereafter, of all monies by him received for duties or otherwise, during the preceding year, and stating as near as practicable the quantity of salt made at said springs during said year, and shall pay into the treasury at the time of making his report, all monies by him received for rent, duties or otherwise, during said year, after deducting so much of his salary and the salaries of his deputies as may then be in arrear, and the expenses of his office.

He shall give bonds.

Make an annual report.

III. *And be it further enacted*, That it shall be the duty of the superintendent to inspect all the salt manufactured at the said salt springs, and to pass no salt but such as is well made, free from dirt and filth, and fully drained from pickle, with the bitters properly extracted. And that all salt so manufactured, which shall be put in casks, shall be packed in good casks, water tight, well hooped with twelve hoops, three on each head, and three on

Salt how inspected and packed.

each bilge ; which casks shall be thirty inches long, and the diameter of each head nineteen inches. And the superintendent, at the time of the inspection of said salt so put into casks, shall mark on each cask with a marking iron, or with durable paint, the quantity of salt contained in such casks respectively, with the initial letter of the christian name of the superintendent, and his surname at full length, in letters of at least an inch in length.— And the superintendent shall not suffer any salt to pass inspection, if the duty is payable by the bushel, and not by the capacity of the kettles or pans, until the duty on the same is paid.— And it shall be the duty of the superintendent, to have at all times one deputy at the village of Liverpool, and one at the village of Salina, and one at the village of Geddes, for the inspection of salt, each of which deputies shall, before he enters on the duties of his office, before some justice of the peace of the county of Onondaga, take and subscribe an oath, faithfully to discharge the trust reposed in him, as deputy to said superintendent, to the best of his knowledge and ability, according to the several laws relative to the salt springs ; which oath the said justice shall certify and lodge, within ten days, in the office of the town clerk of the town of Salina : *Provided*, it shall not be the duty of the superintendent or his deputies to inspect salt in either of the said villages at any other place than the public wharf, or superintendent's office.

Deputies appointed.

Proviso.

Leases how granted.

IV. *And be it further enacted*, That the said superintendent be and he is hereby prohibited from giving any lease or leases of any salt lots, or other land whatever, excepting in pursuance of the award of the commissioners, made agreeable to the tenth section of the act concerning said salt springs, passed the 29th March, 1811, and excepting as he is otherwise required by this act.

3 cents per bushel duty.

V. *And be it further enacted*, That, until the further order of the legislature, a duty of three cents per bushel shall be paid by the manufacturer or purchaser at the time of inspection, on all salt manufactured at said salt springs, on lots heretofore let, or hereafter to be let, in pursuance of the award of the commissioners made agreeable to the tenth section of the aforesaid act ; and at the option of the lessee and his assigns until the further order of the legislature, a duty of three cents per bushel shall and may be paid on all salt manufactured on lots, by the leases of which a rent or duty was reserved on the lot, or on the capacity of the kettles or pans used in the manufacture of salt on such lot, and in lieu of the duty or rent on the lot, or on the capacity of the kettles or pans, and fifty-six pounds weight of salt shall be accounted a bushel.

Or 5 cents per quarter on each gallon of the capacity of the kettle or pan.

VI. *And be it further enacted*, That if any lessee of, or manufacturer on a lot, in the lease of which a rent is reserved on the lot, or on the capacity of the kettles or pans, shall not elect to pay the aforesaid duty of three cents per bushel on the salt manufactured, the lessee and manufacturer shall be holden to pay a duty of five cents for each quarter of a year, during the continuance of the lease, on each and every gallon of the capacity of the kettles and pans, used by him for the manufacturing of salt

on said lot. And if no salt shall be manufactured on any such lot during any quarter of a year, in that case the said lessee shall pay for such quarter of a year a duty of five cents per gallon on three hundred and forty gallons; and the same amount of duty shall be paid by the lessee and lessees of each and every lot on which salt for any quarter of a year shall be manufactured in kettles or pans of a capacity less than three hundred and forty gallons; and all such quarterly payments shall be made on the first days of January, April, July and October, in each year; and if the rent or duty on any such lot, or on the capacity of the kettles or pans as aforesaid, or any part thereof, shall be in arrear and unpaid for the space of twenty days after the same shall become due, it shall be the duty of the superintendent or his deputies to enter upon the said lot, and distrain upon the kettles and implements for manufacturing, and any other property found on said lot, and the same to sell at public vendue to satisfy said rent, giving six days public notice of the time and place of such sale, by putting up an advertisement in three of the most public places in the town of Salina.

Quarterly
payments.

Arrears how
collected.

VII. *And be it further enacted*, That if any person or persons shall convey or transport, or cause to be conveyed or transported, from the salt reservation, by water, any salt not packed in barrels, marked as aforesaid, with intention that said salt shall be conveyed or transported from the said reservation, the person and persons so offending, their aiders and abettors, shall severally forfeit and pay five dollars for each and every bushel of salt so conveyed or transported from said reservation, or so put on board any boat or vessel with intention to convey or transport the same from said reservation.

Penalty for
conveying
away salt not
marked and
packed

VIII. *And be it further enacted*, That if any manufacturer of salt, or any other person, shall convey from the said reservation, any salt before the same shall have been inspected, or shall buy or sell, or remove from any salt manufactory, any salt before the same shall have been inspected, with intention to convey the same from said reservation before the same shall have been inspected, each and every person so offending, shall forfeit said salt, with the barrels or bags in which it is contained, and shall also forfeit and pay five dollars for every bushel of uninspected salt so conveyed from said reservation, or so bought or sold, or removed from the manufactory, with intention to convey the same from said reservation before inspection. And the superintendent and his deputies are each of them hereby empowered to enter any boat or vessel, cart, waggon, sled or sleigh, which he may suspect to contain uninspected salt, and examine the same, and to seize all such uninspected salt so attempted to be transported, and sell the same for the use of the people of the state.

For conveying
uninspected
salt not
inspected.

IX. *And be it further enacted*, That if any manufacturer or other person shall pack or cause to be packed any uninspected salt in any barrel or cask marked as aforesaid, without first cutting out said marks, every person so offending shall forfeit and pay five dollars for every bushel of uninspected salt so packed in any such marked cask or barrel,

For putting
uninspected
salt in mark-
ed casks.

For counter-
feiting super-
intendent's
mark.

X. And be it further enacted, That if any person or persons shall make and counterfeit, or shall aid or assist, command or advise the making and counterfeiting the superintendent's mark or marks on any barrel or cask, every person so offending shall forfeit and pay the sum of fifty dollars for each offence, and shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding fifty dollars, and imprisonment not exceeding six months, or either of them, at the discretion of the court before whom such conviction shall be had.

Lessee how
forfeited.

XI. And be it further enacted, That if any lessee, or assignee of any lessee of a salt lot shall assign or dispose of his lease, or shall underlet the premises contained in his lease, or any part thereof, without the consent of the superintendent expressed in writing, the same lease shall be forfeited, and the premises so assigned or underlet shall revert to the state, and shall be liable to be entered upon by the said superintendent; and to prevent any further sub-division of the salt lots, the superintendent is hereby prohibited from giving his permission to sell or underlet a part of a salt lot which has not been already divided, or so as further to divide a salt lot already divided; nor shall he give any permission to sell any lease, or underlet the premises in any lease contained, or any part thereof, until all arrears of rent upon any such lease shall have been paid.

Surplus water
conveyed to
other lots.

XII. And be it further enacted, That if the spring or springs on any salt lot shall yield more water than is necessary for the manufactory established on said lot, it shall be lawful for the lessee or lessees of any adjoining lot or lots, to lead the surplus water to his or their manufactory; and if such surplus should exceed the quantity required on such adjoining lot or lots, the residue may be led to the next adjoining lots, and so successively from lot to lot until the whole surplus shall be exhausted; and if any controversy shall arise in the premises, the superintendent shall determine the same, and his decision shall be final and conclusive between the parties.

Bad salt may
be destroyed.

XIII. And be it further enacted, That if any salt shall be fraudulently made or offered for inspection, containing dirt, filth, stones, or any other substance mixed therewith, and being of a very bad quality, it shall be the duty of the superintendent and his deputies to destroy such salt and the casks containing the same.

Each manu-
facturer to
keep a ladle.

XIV. And be it further enacted, That each manufacturer shall keep one good pan or ladle for every two kettles he may employ, for the purpose of removing the feculent matter during the process of making salt; and that for every day's neglect in this respect, the manufacturer shall forfeit and pay the sum of twenty-five cents for every such deficiency.

Surplus water
at Salina may
be conducted
to Geddes.

XV. And be it further enacted, That it shall be lawful for the lessees and manufacturers on the salt lots laid out at the village of Geddes, to carry to such salt lots by an aqueduct or trench, any surplus salt water on any lot at the village of Salina, and not used at the manufactories in said village; and it shall be lawful further to lead, take and carry such aqueducts in, through and across any of the marsh land leased by the people of this state, paying to the lessees the damage which may be occasioned there-

by, which damages shall be ascertained in the same manner as the damages are by law assessed in the laying out of highways; and in case of any deficiency of water to supply all the manufactories, such aqueducts and manufactories shall have preference according to the seniority of their erection, whether erected before or after the passing of this act; and further that such aqueducts shall be considered real property, and the owner or owners thereof shall be entitled to recover treble damages in an action of trespass against any person or persons cutting, boring or otherwise injuring the same.

XVI. *And be it further enacted*, That it shall be the duty of the superintendent to give directions from time to time respecting the cutting of timber and wood on said reservation, and to determine the parts or places on said reservation where the timber and wood may be cut for the use of the salt manufacturers, and the size of the wood or timber so to be cut; and also to direct in what places the wood and timber shall be preserved for growth, and where it shall not be cut; and if any lessee, manufacturer or other person shall fell any timber or wood, or shall take and carry away any timber or wood, saplings or poles, from any place or places where the superintendent shall have directed the timber and wood to be preserved for growth, each and every person so offending shall forfeit and pay the sum of five dollars for each offence, and treble the value of such timber, wood, saplings and poles so cut and carried away.

Superintendent to direct respecting cutting of timber.

XVII. *And be it further enacted*, That if any person or persons shall cut or destroy any timber or wood, saplings or poles, standing or growing on said reservation, or shall carry away any timber, wood, saplings or poles which may be lying on the lands in said reservation, each and every person so offending shall forfeit and pay the sum of ten dollars for each offence, and treble the value of the timber, wood, saplings and poles so cut, destroyed or carried away, and shall also be deemed guilty of a misdemeanor, and being thereof convicted by due course of law, shall be punished by imprisonment, not exceeding six months, at the discretion of the court before whom such conviction shall be had: *Provided always*, That nothing in this section contained shall be construed to extend to any person cutting or carrying any timber, wood, saplings or poles for the erection or use of the manufactories, or for the use, on the reservation, of persons lawfully residing thereon.

Penalty for destroying timber.

XVIII. *And be it further enacted*, That the superintendent of the salt springs, for the time being, shall be considered as in possession of all the lands on said reservation belonging to the people of this state; and in case any person is or shall be in possession of any of said land, by intrusion or otherwise, without title, the said superintendent is hereby empowered to institute and maintain an action of trespass, or of trespass and ejectment, against such person, and also to institute and maintain such proceedings against him for the taking or detaining the possession of said land as is given to the owners of land in and by the act, entitled "An act to prevent forcible entries and detainers," and the superintendent is hereby also empowered, at his discretion, to is-

Superintendent considered as in possession of the lands on the reservation.

sue his warrant to any constable of the town of Salina, him commanding to take and remove from the said reservation, any person or persons who shall be residing thereon by intrusion, without a permit or license in writing from the superintendent, which warrant such constable is required to execute.

He may enter on lands occupied by intruders.

XIX. *And be it further enacted*, That the superintendent and his deputies, and any other person by the superintendent appointed in writing, is hereby empowered to enter upon any land belonging to the people of this state on said reservation, which shall have been intruded upon by any person, and who shall have quitted his possession and left the same vacant, and having so entered, to tear down and destroy the buildings and fences on said land so intruded upon and left vacant.

XX. And whereas the village of Geddes as heretofore laid out by the superintendent, is found by experience to be improperly and inconveniently situated; to remedy which,

Geddes, site may be altered.

Be it further enacted, That the superintendent, is hereby authorised and empowered, by and with the consent of the purchasers of the village lots in the village of Geddes, to lay out on the turnpike road, a little westerly of the present village lots, near the dwelling-house now or lately occupied by Jacob J. Vander Warden, the same number of village lots as are now laid out in said village of Geddes, each of which to contain the same quantity of land as the present village lots, and to exchange one of the village lots so to be laid out for each of the village lots heretofore laid out and sold; and in cases where the purchaser or purchasers of any such village lot have already received a deed of the village lot by him or them purchased, the superintendent shall take a deed or re-conveyance to the people of this state from such purchaser or purchasers of such village lot, and shall, in behalf of the people of this state, execute and deliver in exchange, a deed to said purchaser or purchasers of one of the village lots so to be laid out, and which he or they shall have agreed to receive in exchange; and in cases where no deed has yet been given to the purchaser of any of said village lots by him purchased, the superintendent is hereby authorised and empowered to receive back and cancel the contract made with such purchaser for such lot, and to execute and deliver to him a new contract of the same date, tenor and import, and with the same conditions and provisions with the contract so received back and cancelled, for one of the village lots, so to be laid out, and for which said village lot mentioned in the present existing contract shall be exchanged: *Provided always*, That the superintendent shall not execute and deliver to any purchaser or purchasers of a village lot, a deed of any of the village lots to be laid out by virtue of this act, until the said purchaser or purchasers shall produce to him full proof that the title of the lot, for which the village lot to be laid out shall be exchanged, is in the said purchaser or purchasers, free and clear from all mortgages, judgments, liens and incumbrances whatever.

Lots may be exchanged.

Previous.

Time extended for making payments on certain lots.

XXI. *And be it further enacted*, That the time for the payment of the purchase money of the village lots, in the villages of Liverpool and Geddes, as to one half the balance now due thereon, is hereby extended to the first day of January, in the year

one thousand eight hundred and thirteen, and as to the residue, to the first day of January, in the year one thousand eight hundred and fourteen, any thing in any former law to the contrary notwithstanding; and the superintendent is hereby empowered, on the receipt of the purchase money and interest due on any of said lots, to give deeds of such lots so paid for, in behalf of the people of this state, to the respective purchasers, at any time on or before the said first day of January, in the year last aforesaid.

XXII. *And be it further enacted*, That the leases of the five acre or small pasture lots, heretofore leased by the superintendent of said salt springs, to such lessees of salt lots, whose leases of such salt lots have been adjudged to be valid by the commissioners appointed by and by virtue of the act of the legislature respecting said salt springs, passed April 5th, 1810, are hereby confirmed and declared to be good and valid, until the twentieth day of June, in the year one thousand eight hundred and twenty-eight; and it is hereby made the duty of the superintendent, so soon as may be after the passing of this act, to lease, to the twentieth of June, one thousand seven hundred and twenty-eight, the residue of the five acre lots laid out by James Geddes before the first day of March, one thousand eight hundred and eight, to the occupiers and claimants of said lots respectively; and to cause to be laid out on the feasible or upland, in places the most convenient to the villages of Liverpool, Salina and Geddes, so many seven acre lots as shall be sufficient, and to let one of said seven acre lots to the lessee or lessees of each of the salt lots of which a lease was awarded by the aforesaid commissioners, excepting such persons as are entitled to a five acre lot by virtue of this act, and also to give a lease to Freeman Hughes of the salt lot at Geddes village, on which he hath erected a salt house, and also a seven acre lot, on the same terms and conditions on which leases have been given to other lessees; all which leases to be given by virtue hereof, shall expire on the twentieth day of June, in the year one thousand eight hundred and twenty-eight.

Leases of certain five acre lots confirmed for a term of years.

Residue how to be leased.

To lease a lot in Geddes to F. Hughes

XXIII. *And be it further enacted*, That the superintendent shall lay out on Leek-hill, near the village of Liverpool, and adjoining a road running northerly, a lot of land, not exceeding one acre, for a burying ground.

A lot may be laid out for a burying ground.

XXIV. *And be it further enacted*, That it shall be the duty of the superintendent to divide so many of the village lots, in the villages of Salina, Liverpool and Geddes, as he shall think proper, into sections, of not less than quarter lots at the village of Salina, and half lots at the villages of Liverpool and Geddes, and to sell the same at vendue, giving three weeks notice, by an advertisement put up at the most public place in each village, of the time and place of such sale; and the purchaser shall pay one-eighth of the purchase money on the day of sale, and within six days thereafter shall execute and deliver to the superintendent, his covenant to the people of this state, for the payment of the residue of the purchase money and interest, in six equal annual instalments, and in default of paying said one-eighth, or delivering said covenant as aforesaid, said purchase shall be void; and the superintendent, before he shall proceed to make such division of

Certain lots may be divided into sections and sold.

Two lots may be set apart for gospel and schools.

said village lots, shall select and set apart two village lots in each of said villages, for the support of the gospel and of schools; and the superintendent is hereby empowered to give the purchaser of any of said sections, deeds of the same, when such purchaser shall have paid the purchase money and interest thereof; and it shall be the duty of the superintendent to cause surveys, descriptions and maps, to be made of all lots and sections of lots by him leased or sold in pursuance of this act, and also of the lots he shall lay out in the village of Geddes, and of the lots now in the village of Geddes, which he shall exchange for lots to be laid out in said village, and shall cause one copy of such surveys, descriptions and maps, to be filed in the office of the surveyor-general, and another like copy in the office of the clerk of the county of Onondaga: *Provided*, Said superintendent shall not divide, as aforesaid, more than six lots in the village of Salina, eight in the village of Liverpool, and four in the village of Geddes: *And provided further*, That no purchaser of any section of a village lot, on which section there shall be erected any building or buildings of a greater value than twenty-five dollars, which shall be estimated by the superintendent, shall be allowed to take possession of such section until he shall pay to the owner or owners of such building or buildings two-thirds of the value of such building or buildings, to be valued by the superintendent: *And provided further*, That no section of a lot in the village of Salina shall be sold at a rate less than one hundred dollars a lot, nor in the village of Liverpool at a rate less than fifty dollars a lot, nor in the village of Geddes at a rate less than thirty dollars a lot.

Proviso.

Further proviso.

Persons prohibited from building on certain lots.

XXV. *And be it further enacted*, That it shall not be lawful for any lessee or other person to erect any building for the manufacturing of salt, or to set or use any kettles or pans, in the manufacturing of salt, on any of the lots leased by virtue of the second section of the act relating to the said salt springs, passed April 3d, 1807; and if any buildings should be erected, or any kettles or pans set or used for the manufacturing of salt on any of said lots, it shall be the duty of the superintendent and his deputies to enter upon such lot and cause such buildings to be pulled down, and such kettles and pans to be removed: *Provided*, That nothing in this section contained shall be construed to extend to the salt works now occupied by Ichabod Bracket.

Proviso.

A lot may be laid out for making salt by evaporation.

XXVI. *And be it further enacted*, That it shall be the duty of the superintendent to cause to be laid out two acres of land, on such part of the said salt reservation as he may deem proper, for the purpose of making salt by evaporation other than by fire; and the superintendent is hereby required to lease the same for that purpose, for the term of seven years, free of rent or duty, to such person or persons as he shall think proper, and to allow them any surplus water for that purpose; and to encourage an experiment for the making of salt by such evaporation, no similar exemption shall be granted for seven years.

The Sup. shall take an oath.

XXVII. *And be it further enacted*, That the superintendent shall, within thirty days after his appointment, and before he enters on the duties of his office, take and subscribe an oath well and faithfully to discharge the duties of his said office, and shall

file the same with the comptroller; and in case the superintendent shall neglect, for thirty days after his appointment, to take and subscribe or file said oath, or shall neglect, for thirty days after his appointment, to execute and deliver to the comptroller the bond required by the second section of this act, such neglect shall be deemed a refusal to serve, and his appointment shall be void.

XXVIII. *And be it further enacted*, That every transfer of any leased lot or part of a lot, made by permission of the superintendent, shall be recorded in the office of the clerk of the town of Salina, or be deemed fraudulent against any subsequent bona fide purchaser, and the said clerk is hereby prohibited from recording any such transfer, unless the permission of the superintendent is indorsed, and the said clerk may receive twenty-five cents, and no more, for recording each of such transfers. Transfers of lots shall be recorded in Salina.

XXIX. *And be it further enacted*, That the superintendent shall reside on or near the said reservation, and if he shall at any time after he shall enter on the duties of his office, be or become, directly or indirectly, interested in any of the salt works, he shall lose his office, and forfeit and pay to the people of the state of New-York five hundred dollars, to be recovered by action of debt, or information in the supreme court of this state, with costs of suit. The Sup. shall reside on or near the reservation.

XXX. *And be it further enacted*, That each and every forfeiture in this act mentioned, excepting as is otherwise provided, shall and may be sued for and recovered, with costs of suit, by the superintendent in his official name, before any court having cognizance of the same, and the one half, when received, shall be to the use of the people of this state, and the other half to the use of the person who shall give information to the superintendent of the offence for which any such recovery shall be had. Forfeitures shall be recovered in the name of the Sup.

XXXI. *And be it further enacted*, That the superintendent and his deputies, for the time being, shall be and hereby are declared to be exempted from serving on juries, and, except in cases of actual invasion, from militia duty. He and his deputies exempted from juries, &c.

XXXII. *And be it further enacted*, That it shall be the duty of the superintendent to cause such repairs to be made to the public buildings on the said reservation, excepting the block-house, as shall be necessary for their preservation.

XXXIII. *And be it further enacted*, That the salary of the superintendent shall hereafter be eight hundred dollars per annum, over and above what is allowed for his deputies, and that the comptroller, on the settlement of accounts with the superintendent, shall allow to him his said salary, and also eight hundred and fifty dollars for the salaries of his three deputies, and also the sums of money by him necessarily expended in repairing the public buildings, for their preservation as aforesaid, and also all his expenses in causing the necessary surveys and maps to be made in performing the duty required by this act, and also his expenses for the purchase of stationary, and all implements necessary for the inspection of salt, and all necessary office expenses. Salary of the Sup. and his deputies.

XXXIV. *And be it further enacted*, That all the acts heretofore passed relative to the said salt springs shall be and hereby Former acts repealed.

Revised.

are repealed, excepting an act for the appointment of a superintendent, passed 22d of February, 1811 : *Provided always*, That this repeal shall not in any way affect or invalidate any deeds or leases heretofore given, of any land on said reservation, or any assignment of or contract respecting the said deeds or leases, or any of them, or to affect or invalidate any covenant, condition or limitation, in said deeds or leases, or any of them contained, or to affect or invalidate any titles, rights or privileges, rents, duties, forfeitures, liabilities or penalties, acquired, accrued or incurred, under or by virtue of any of said acts, or the means of preserving, enforcing or collecting the same.

CHAP. CCXLII.

An ACT for the establishment of Common Schools.

Passed June 10, 1812.

[S. sess. 35. 490.]

Superintendent to be chosen.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That there shall be constituted an officer within this state, known and distinguished as the superintendent of common schools, which superintendent shall be appointed by the council of appointment, and shall keep his office at the seat of government, and shall be allowed an annual salary of three hundred dollars, but not to be under pay until he shall give notice of the first distribution of the school money, payable in the same way as is provided for other officers, by the act, entitled "an act for the support of government."

His salary.

He shall digest and prepare plans for the improvement of common schools, &c.

II. *And be it further enacted*, That it shall be the duty of the superintendent aforesaid, to digest and prepare plans for the improvement and management of the common school fund, and for the better organization of common schools ; to prepare and report estimates and expenditures of the school monies, to superintend the collection thereof, to execute such services relative to the sale of the lands, which now are or hereafter may be appropriated, as a permanent fund for the support of common schools, as may be by law required of him ; to give information to the legislature respecting all matters referred to him by either branch thereof, or which shall appertain to his office : and generally to perform all such services relative to the welfare of schools, as he shall be directed to perform, and shall, prior to his entering upon the duties of his office, take an oath or affirmation for the diligent and faithful execution of his trust.

No distribution of the school fund shall be made until the interest amount to 30,000 dollars.

III. *And be it further enacted*, That no distribution of the interest of the school fund shall take place amongst the common schools in this state, until it shall arise to fifty thousand dollars a year ; and it shall not be lawful for the superintendent aforesaid to distribute any more than fifty thousand dollars a year until he shall find he will be able to distribute sixty thousand, and the sum of sixty thousand until the interest shall arise to seventy thousand, and so on as often as the interest shall increase ten thousand dollars, it shall be lawful for the superintendent to add

to the sum last distributed ten thousand dollars more; and in all cases when he shall find he will be enabled to add ten thousand dollars to the sum last distributed, the next year, it shall be his duty to send a notice to the county clerk, and for said county clerk to notify the several town clerks in his county previous to such increase of monies to be distributed in the same form and manner as is provided in the fifth section of this act, to be made previously to the first distribution.

IV. *And be it further enacted*, That the interest of the school funds which shall accumulate annually between the time of the first distribution of fifty thousand dollars, and sixty thousand dollars, and seventy thousand dollars, and so on from time to time, shall, by the comptroller, be loaned and re-loaned in the same form and manner, and on the same security as he is now by law directed to loan the monies belonging to the common school fund of this state, and shall become principal in said funds.

Interest received after the first distribution to be re-loaned.

V. *And be it further enacted*, That the superintendent of common schools shall, in the month of January, which will be thirteen months before the first distribution of the interest of the school fund, send a notice in writing to each of the county clerks in this state, informing them that there will be a distribution of the interest of the school fund in the month of February, which will be thirteen months after the date of said notice, stating the amount that will be assigned to each county. And it shall be the duty of the said county clerks, to send a like notice to the clerk of the board of supervisors, and to each town clerk in his county, stating the amount of money to be distributed, and the time when, which notice the town clerk shall read at the opening of the next town meeting, to the intent that the town meeting may direct by their vote the supervisor, to levy on said town, at the next meeting of the board aforesaid, the sum for the support of common schools, required by this act to entitle said town to its proportion of the interest of said fund to be distributed; and the supervisor of each town so complying, shall, on or before the first Tuesday of June after, in each year, deliver a notice in writing, of such compliance, to the clerk of the board of supervisors of the county, and said clerk shall, at the opening of the next meeting of said board, report the several notices so received to the board of supervisors aforesaid, whose duty it shall be to apportion the county's proportion of said monies amongst the several towns that shall have directed the raising of such school monies, according to the population of each town as ascertained by the census of the United States having so complied, and file a list of the names of such towns, with the several sums allotted to each of them, in the office of the county treasurer, and the said county treasurer shall pay to the school commissioners of each such town its proportion of said school money according to said list. And the board of supervisors shall cause to be added to the sum raised in each of said towns, to pay the contingent expenses of the respective towns, a sum equal to the sum which such town is to receive of the school monies aforesaid, with the addition of five cents on a dollar, of said sum for collection fees, and direct the collector in his warrant to pay the same,

Notice to be given to county clerks 13 months before first distribution.

Each town shall levy a certain sum.

when collected, into the hands of the school commissioners of the several towns, reserving his fees, and take their receipt therefor; which receipt shall be his voucher of having paid such sum, and the treasurer shall file the same in his office, without fee or reward: *Provided always*, That the respective towns may, at their town meetings direct as much more money to be raised than is equal to their respective proportion of the school money as they may deem proper for the purposes aforesaid, not exceeding double said sum.

Proviso.

Town commissioners to be chosen.

VI. *And be it further enacted*, That the inhabitants living within the limits of the several towns within this state, and within the cities of Hudson and Schenectady, who by law have, or may have a right to vote in town meetings, shall, on the days of their annual town meetings, choose, by ballot, three of the inhabitants of their respective towns, commissioners, to superintend and manage the concerns of the schools within said towns respectively, and to perform all such services relative to schools as they shall be directed to perform; that said commissioners, before they enter upon the execution of their office, shall respectively take an oath or affirmation, for the diligent and faithful execution of their trust, which commissioners shall be allowed for their services so much as the inhabitants of said towns respectively shall direct, and the same shall be paid out of the monies raised for town expenses. And the inhabitants of said towns respectively, shall choose a suitable number of persons within their respective towns, not exceeding six, who, together with the commissioners aforesaid, shall be inspectors of the schools of said towns respectively; which inspectors shall examine the teachers, and approve or disapprove of the same, and also shall visit the several schools within their respective towns, quarterly or oftener, if they deem it necessary; three or more of the said inspectors shall be competent both to examine the teachers, and the respective schools, and no person shall be employed as a teacher in any one of the schools, in any of the districts of this state, who shall not have been previously examined by the inspectors aforesaid, and have received a certificate, signed by at least two of said inspectors, importing that he is duly qualified to teach a common school, and is of good moral character. And it shall be the further duty of the inspectors to examine into the state of the schools in their respective towns, both as it respects the proficiency of the scholars, and the good order and regularity of the schools; and from time to time to give their advice and directions to the trustees, as to the government of the same.

School inspectors to be chosen.

Towns to be divided into school districts.

VII. *And be it further enacted*, That the commissioners aforesaid are hereby authorised and empowered to divide their respective towns into a suitable and convenient number of districts, for keeping their schools, and to alter and regulate the same from time to time, as there may be occasion: and whenever it may be necessary and convenient to form a district out of two or more adjoining towns, such district may be formed by the commissioners from all such towns parts of which may be included in such district, and may be in like manner altered or changed at their pleasure; and every such district shall be under the

superintendence of the inspectors of the town in which such school-house shall be situated, and numbered accordingly. And where it shall be convenient for any neighborhood adjoining to any other state, where such neighborhood has been in the habit of sending their children to a school in such adjoining state, it shall be lawful for said commissioners to set off such neighborhood by themselves, and such neighborhood shall be entitled to their share of the monies amongst the several districts in the town where said neighborhood shall be situate, in proportion to the number of children in such neighborhood between the ages of five to fifteen years; and it shall be lawful for such neighborhood to meet together and appoint one trustee, who shall make a report to said commissioners on or before the first day of May in each year, containing the number of children in such neighborhood from five years to fifteen, inclusive, and the number educated in said school in the preceding year; and it is hereby made the duty of the commissioners aforesaid to describe and number each district within their respective towns, and deliver the same in writing to the clerk of such town, who is hereby required to record the same in the town records. And whenever a district shall be altered, pursuant to this act, it shall be the duty of the said commissioners to make a new description corresponding with such alteration, and the same shall be recorded in manner aforesaid.

VIII. *And be it further enacted*, That whenever any town in this state shall be divided into school districts, according to the directions of this act, it shall be the duty of one of the school-commissioners of said town, within twenty days after, to make a notice in writing, describing said district, and appointing a time and place for the first district meeting, and deliver said writing to some one of the freeholders or inhabitants, liable to pay taxes, residing in said district, whose duty it shall be to notify each freeholder or inhabitant residing in said district, qualified as aforesaid, by reading such notice in the hearing of each such freeholder or inhabitant, or leaving a copy thereof at the place of his abode, at least six days before the time of such meeting; and if any such freeholder or inhabitant shall neglect or refuse to give such notice, he shall pay a fine of five dollars, to be recovered in the same manner, and for the same use, as is provided in the ninth section of this act. Such district meeting shall have power, when so convened, by the major vote of the persons so met, to adjourn from time to time as occasion may require, and to fix on a time and place to hold their future annual meetings, which annual meeting they are hereby authorised and required to hold, and to alter and change the time and place of holding such annual meeting as they or a majority of them, at any legal meeting, may think proper. And at such first meeting, or any future meeting, the said freeholders and inhabitants, or a majority of them so met, are hereby authorised and empowered to appoint a moderator for the time being, to designate a site for their school-house, to vote a tax on the resident inhabitants of such district as a majority present shall deem sufficient to purchase a suitable site for their school-house, and build, keep in repair, and furnish it with necessary

Commissioners shall give notice of district meeting.

District meetings how to be conducted.

fuel and appendages ; also to choose three trustees to manage the concerns of such district, whose duty it shall be to build and keep in-repair their school-house, and from time to time, as occasion may require, to agree with and employ instructors, and to pay them ; also to choose one district clerk to keep the records and doings of said meeting, whose doings shall be good in law, who shall be qualified by oath or affirmation, as the several town clerks are ; likewise one collector, who shall have the same power and authority, and have the same fees for collecting, and be subject to the same rules, regulations and duties, as respects the business of the district, which by law appertaineth to the collectors of towns in this state ; and the said trustees, clerks and collectors shall not be compelled to serve more than one year at any one time ; and it shall be the further duty of the trustees of each district as soon as may be after the district meeting have voted a tax, to make a rate bill or tax list, which shall raise the sum voted, with five cents on a dollar for collector's fees, on all the taxable inhabitants of said district, agreeable to the levy on which the town tax was levied the preceding year, and annex to said tax list or rate bill a warrant, which warrant shall be substantially as followeth :

Form of collector's warrant.

ss. To
 'County of collector of the district, in the town of
 in the county aforesaid, greeting: In the name of the people of the state of New-York, you are hereby required and commanded to collect from each of the inhabitants of said district, the several sums of money written opposite to the name of each of said inhabitants, in the annexed tax list, and within days after receiving this warrant, to pay the amount of the monies by you collected into the hands of the trustees of said district, or some one of them, and take their or his receipt therefor. And if any one or more of said inhabitants shall neglect or refuse to pay the sum, you are hereby further commanded to levy on the goods and chattels of each delinquent, and make sale thereof according to law. Given under our hands and seals this day of 181

{ I.S. }
 { L.S. } Trustees.
 { L.S. }

Trustees may call special meetings.

IX. *And be it further enacted*, That the trustees of each district, or a majority of them, whenever they shall deem it expedient, may call a special meeting of the inhabitants of said district, to transact any business which may come regularly before them : *Provided always*, That such trustees shall give five days notice, in writing, to the inhabitants of said districts respectively.

Penalty for refusing to serve when appointed to an office.

X. *And be it further enacted*, That every person and persons, being duly chosen and appointed as aforesaid, to serve in any of the offices aforesaid, who shall refuse to serve therein, and to take the oath, (if any by law be required) to said office respectively belonging, if he be able to execute the said duties, shall pay the sum of five dollars, with costs, to be recovered by an action of debt, brought by the school commissioners of the town or any individual, on this statute, before a justice of the peace in the

county where the defendant shall dwell, in the ordinary mode of proceeding before magistrates; which money, when collected, after deducting the costs, shall be subject to the order of the commissioners of the town where the defendant was so chosen and appointed to office as aforesaid, for the use of the common schools in said town; and every such officer, duly chosen and appointed as aforesaid, having accepted (or not declared his refusal to accept) the office he is appointed to, and who shall neglect the performance of the trust committed to him, shall pay the sum of ten dollars, and the same shall be recovered in manner aforesaid, with costs of prosecution, and when collected, shall be disposed of in manner aforesaid.

XI. *And be it further enacted*, That if any person who is not duly qualified, according to this act, to vote in any town-meeting, shall vote for the choice of officers, granting of taxes, or any other matters contemplated in this act, such persons so offending, and being thereof convicted before any court having competent jurisdiction, shall be fined in a sum not exceeding five dollars, and not less than three dollars, at the discretion of the court, and shall pay all costs and charges of prosecution; and the fine, when collected, shall be disposed of in the manner directed in the preceding section.

Penalty for voting when not qualified.

XII. *And be it further enacted*, That the several persons appointed within any town to any office instituted by this act, may hold their offices until the annual meeting next following such appointment, and until others shall be appointed in their places; and whenever it shall happen that the said offices, or any of them, shall be vacated, either from neglect of appointment, refusal to serve, death, or removal from the district or town, or incapacity of such as may be thus appointed, such vacancy or vacancies may be supplied in the way and manner prescribed in the sixth section of the act, entitled "an act relative to the duties and privileges of towns," in similar cases, which officers, thus appointed, shall be regarded the same in all respects as if appointed by the inhabitants of such district or town.

Tenure of offices.

Vacancies how to be filled.

XIII. *And be it further enacted*, That from and after the passing of this act, the interest of the common school fund, arising under the several acts of this state, as from time to time it shall become due, shall be paid to the treasurer of this state, which, together with all such monies as are by law pledged and appropriated for the encouragement and support of common schools, shall be distributed and applied pursuant to this act, and not otherwise: and to the end that the said monies may be inviolably applied in conformity to this act, and may never be diverted to any other purpose, an account shall be kept by the treasurer of the receipts and dispositions thereof, separate and distinct from other accounts.

School fund to be applied pursuant to this act.

XIV. *And be it further enacted*, That the several towns in this state which shall conform to the provisions of this act, shall be entitled to such monies, to be distributed to them severally, according to the number of inhabitants in each town, to be ascertained by the respective census under the constitution of the United States, subject nevertheless to a distribution thereof, by

Privileges of towns conforming to this act.

said town, to the several school districts therein, pursuant to this act.

Monies how
to be apportioned.

XV. *And be it further enacted*, That the several school districts within the several towns in this state which shall conform to the provisions of this act, shall be entitled to the monies deposited with the commissioners as aforesaid, to be distributed to said districts severally, according to the number of children within each district, between the ages of five and fifteen inclusive, as shall appear from the returns of the trustees aforesaid, made pursuant to this act; and it is hereby made the duty of said commissioners, annually, on or before the first day of May, to apportion the monies aforesaid to the several school districts, in manner aforesaid; but in each district, composed of more than one town, each of the several parts shall draw its proportion, according to its number of children as aforesaid, from the town in which such part shall be situate; for which purpose, it shall be the duty of the trustees of such district, not only to make a general report as is herein after directed, but a report of the number of children in each part, to their several town commissioners respectively, and to pay over to each of said districts its share thereof, on the order of one or more of the trustees of such district, taking a receipt therefor; which monies shall be applied and expended by said trustees in paying the wages of the teachers to be employed, and for no other purpose; and further, that the accounts of said commissioners shall annually be audited and settled by the board appointed by law to settle accounts of overseers of the poor in the respective towns: *Provided*, That after the first year, no order shall be accepted, nor shall the commissioners aforesaid deliver the monies, directed to be delivered as aforesaid, until two of the trustees of such district shall have certified in writing, under their hands, in the words following, viz: We, the trustees of the school district within the town of do certify, that the school in said district hath been kept for three months at least, during the year ending on the first day of May last, by an instructor duly appointed and approved in all respects, according to law, and that all the monies by us drawn from the commissioners for said year, appropriated for schools, have been faithfully applied and expended in paying the wages of said instructor.—Dated

} Trustees.

Further provision.

Provided always, That nothing herein shall be so construed as to prevent any persons attending said schools, whom the trustees aforesaid may deem proper to admit: *Provided further*, That whenever the aggregate expense of paying the instructors in schools, in any of the towns in this state, shall in any year equal or exceed the fund deposited with the commissioners as aforesaid, although any one or more of the districts in such town shall not have kept a school within the year, or not long enough to expend its proportion of such monies which otherwise would

have belonged to such district, the monies thus unexpended and remaining with the commissioners aforesaid, shall be paid to and applied in the districts which have complied with the law, and which shall have expended, in paying instructors, a sum exceeding their proportion, regard being had, as far as may be, to their respective rights; but if such aggregate expense shall not equal the funds for any given year, then the monies shall remain with the commissioners aforesaid, to be added to and distributed with the monies next to be appropriated under this act.

XVI. *And be it further enacted*, That if the trustees appointed under this act shall make a false certificate, by means whereof the school monies aforesaid shall be fraudulently obtained from the commissioners, each person signing such false certificate shall forfeit the sum of twenty dollars to the commissioners of such town to which such trustees shall belong, to be recovered by action of debt on this statute, in the name of the said commissioners, who are hereby required to prosecute therefor accordingly; and the sum when recovered, shall be applied for the benefit of the common schools in said town.

Penalty for making false certificates.

XVII. *And be it further enacted*, That the trustees of the several school districts shall, annually, on the first day of May, make and transmit to the commissioners of the town wherein their respective districts are situated, a report, specifying the length of time a school hath been kept in said district; the amount of monies received; the manner the same hath been expended; and, as nearly as may be, the number of scholars taught therein, and the number of children, from five years old to fifteen inclusive, except Indian children otherwise provided for by law; whereupon the commissioners of the several towns aforesaid shall, on or before the first day of July, annually, make a town report to the clerk of the county wherein such town shall be situate, which report shall embrace the same objects as are contained in the report of the trustees as aforesaid; and the clerks of the several counties in this state shall, on or before the first day of November, annually, make a county report, in manner aforesaid, comprising the several reports received by them as aforesaid, and transmit the same to the superintendent of common schools: whereupon the said superintendent shall annually, on or before the first Tuesday in February, make a report to the legislature, embracing all the objects contemplated in this act: *Provided always*, That the several duties enjoined on the several county treasurers and county clerks, shall be done without fee or reward; and if any of the said treasurers or clerks shall refuse to do any of said duties, he or they shall forfeit and pay the same fine which is imposed, as aforesaid, on the town commissioners and trustees of districts; which fine shall be recovered in the same way, and applied to the same purpose, as the fines imposed on said commissioners and trustees.

Trustees to make an annual report to the commissioners.

Commissioners to report to the county clerks.

Clerks to report to the superintendent.

Proviso:

XVIII. *And be it further enacted*, That out of the school money apportioned by the superintendent, from time to time, to the county of Albany, the city of Albany shall have its proportion, with the towns in the county, according to the population thereof, and shall be paid by the county treasurer into the hands of

Proportion belonging to the city of Albany to be paid to the trustees of the Lancaster school.

the trustees of the Lancaster school, in said city, who shall give their receipt therefor, to be applied to the education of such poor children, belonging to said city, which may be, in the opinion of the said trustees, entitled to gratuitous education: *Provided*, That the said trustees shall receive into said school, all the children of every poor person residing in said city, and in no wise turn away any child that shall be, for that purpose, presented to them, from time to time; and that said trustees shall account to the county treasurer of said county for the faithful application of said money, according to the true intent and meaning of this act; and shall make a true report of the state of the school, with the number of scholars educated in said school, in the year last passed, to the county clerk, on the first day of July in each year, to be incorporated into the county report to be made to the superintendent of common schools.

Meetings may be called in each town to elect commissioners.

XIX. *And be it further enacted*, That the clerk of each town, and of the cities of Hudson and Schenectady, shall, at any time after the passing of this act, on application of any six freeholders of such city or town, warn a town-meeting, giving at least eight days notice of such meeting in the manner now provided by law, for the purpose of electing commissioners of schools.

When towns are divided, school monies to be apportioned.

XX. *And be it further enacted*, That in all cases in which any new town or towns may have been erected, or shall hereafter be erected, from a part of any other town or towns since the census aforesaid, it shall be the duty of the supervisors of such towns, to meet on the day of the month, and at the place directed by the law for erecting such town, or at such other time and place as they may agree upon, and shall then and there apportion the money to be divided between the said towns, in the same proportion as the poor of the town, and the money belonging to them, shall be divided.

THIRTY-SIXTH SESSION.

CHAP. LII.

An ACT supplementary to the act, entitled "An act for the establishment of Common Schools."

Passed March 12, 1813.

[S. sess. 36. 53.]

WHEREAS the provisions contained in the act for the establishment of common schools do not extend to the city and county of New-York: Therefore,

City of New-York entitled to a proportion of the school fund.

I. *BE it enacted by the People of the State of New-York represented in Senate and Assembly*, That of the school money which shall from time to time be distributed amongst the several counties of this state, the city and county of New-York shall be entitled to its proportion according to the population thereof, as the same shall from time to time be ascertained by the latest census of the United States, and which said proportion shall be paid to the chamberlain of the said city of New-York in the same manner

and at the same times as the proportions of the several other counties are directed to be paid in and by the act for the establishment of common schools; and it shall be the duty of the said chamberlain to receive and hold the same, subject to the orders of the commissioners of the school money herein after mentioned.

II. *And be it further enacted*, That whenever the clerk of the city and county of New-York shall receive the notice which the superintendent of common schools is by the fifth section of the said act required to give to the several county clerks, he shall lay the same before the mayor, recorder and aldermen of the said city at their next meeting thereafter; and the said mayor, recorder and aldermen are hereby authorized, empowered and required to raise and collect by tax on the inhabitants of the said city, a sum equal to the amount which shall be apportioned to said city and county, in the same manner as in and by the fifth section of the said act the board of supervisors within the several counties of this state is directed and empowered to do; and the collector or collectors, in his or their respective warrants, shall be directed to pay the same, when collected, to the chamberlain, reserving his or their fees, and take a receipt therefor, which receipt shall be a sufficient voucher of having paid the same as aforesaid.

An additional sum to be raised by tax.

III. *And be it further enacted*, That the mayor, aldermen and commonalty of the city of New-York, in common council convened, shall appoint five of the inhabitants of the said city commissioners of school money, who, before they enter upon the duties of their office, shall respectively take an oath or affirmation, diligently and faithfully to execute their trust, which said commissioners shall hold their office for the term of one year, unless sooner vacated by death or removal out of the said city, and shall be liable to the penalties mentioned in the tenth section of the said act, for refusal or neglect of duty.

Common council to appoint school commissioners

IV. *And be it further enacted*, That the commissioners aforesaid, shall receive from the chamberlain of the said city of New-York, the money which shall from time to time be apportioned and paid to the city and county, together with such monies as shall be raised by the mayor, recorder and aldermen as herein before directed, and which the said chamberlain is hereby authorized and required to pay to the said commissioners; and the said commissioners shall, on or before the first day of May in each year, distribute and pay the said monies so received from the said chamberlain, to the trustees of the free school society in the said city of New-York, and the trustees or treasurers of the Orphan's Assylum society, the society of the Economical school in the city of New-York, the African free school, and of such incorporated religious societies in said city as now support or hereafter shall establish charity schools within the said city, who may apply for the same; and such distribution shall be made to each school in proportion to the average number of children between the ages of four and fifteen years, taught there in the year preceding such distribution, free of expense: *Provided*, That no money shall be distributed by the commissioners aforesaid to the trustees of such free school, or of such charity schools, as shall

Their duty in distributing the money.

Proviso:

not have been kept for the term of at least nine months during the year preceding such distribution as aforesaid.

Returns to be made to the commissioners of the number of children from four to fifteen years.

V. *And be it further enacted*, That the trustees or treasurers of the aforesaid societies in the said city as support charity schools therein, shall respectively, on or before the first day of May in each year, certify under their respective corporate seals, to the commissioners aforesaid, the whole number of children between the ages of four and fifteen years who shall have been taught in their respective schools, free of expense, during the preceding year, specifying the number of regular scholars therein at the end of each quarter in such year, and the time during which their respective schools shall have been regularly kept for such preceding year; and after the first distribution of school money shall have been made, the trustees or treasurers aforesaid shall respectively certify in manner aforesaid the amount of money which they shall have received from the said commissioners, during the preceding year, and the manner in which the same shall have been expended, whereupon the commissioners aforesaid shall make report to the clerk of the city and county of New-York, who shall transmit the same to the superintendent of common schools in the manner directed by the seventeenth section of the act for the establishment of common schools.

Monies how to be applied.

VI. *And be it further enacted*, That the sums of money which the respective trustees or treasurers aforesaid shall from time to time receive from the commissioners aforesaid, shall be applied by them to the payment of the wages of the teachers to be employed by them respectively, and to no other purposes whatever.

School inspectors.

VII. *And be it further enacted*, That the trustees or treasurers of the aforesaid societies in the said city as now or hereafter may support charity schools therein as aforesaid, shall be inspectors of the schools in their respective societies, and shall possess the like powers and perform the like duties relating to their respective schools as the inspectors of schools are authorized and empowered to do in and by the sixth section of the act for the establishment of common schools.

CHAP. LXXVIII.

An ACT relative to Incorporations and the Division of Counties.

Passed March 26, 1813.

[S. sess. 36. 115.]

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly*, That when any association shall be formed for any purpose whatever, after the first day of July next, shall be disposed to make application to the legislature for an act of incorporation, or any company or association already incorporated shall be disposed to make application for any alteration in the law so incorporating them, it shall be the duty of the persons so associated, or the directors or stockholders of such

incorporation, or some of them, to signify such their intention by advertisement, to be inserted for at least six weeks successively immediately before such application, in one or more of the newspapers printed in the county where the objects of such association or incorporation is carried or intended to be carried into effect, (and also in the newspaper printed by the printer to this state) and if no newspaper be printed in such county, then in the newspaper or papers nearest to the same, and shall specify the objects of such incorporation, the amount of capital stock requisite to carry their objects into effect; and in case of an application for any alteration in any charter already granted, it shall be the duty of the stockholders or directors of such incorporation to state in such notice specifically the alteration so to be applied for; and that due proof shall be made of such notice having been published previous to leave being given to bring in any bill to comply with any such application.

II. *And be it further enacted*, That the like notice shall be published of any application to divide any county within this state, or to erect any new county out of parts of counties.

CHAP. LXXIX.

An ACT for the relief of Judgment and Mortgage Debtors to the People of this State.

Passed March 26, 1813.

[S. sess 36. 116.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That it shall be lawful for the attorney-general, whenever any judgment in favor of the people of this state for any debt or damages, shall be satisfied or in any manner settled, pursuant to the legislative provisions, to acknowledge satisfaction of record of such judgment.

II. *And be it further enacted*, That it shall be lawful for the comptroller whenever any mortgage given to the people of this state shall be satisfied or in any manner settled pursuant to legislative provisions, to execute a certificate to the mortgagor of such satisfaction or settlement, in order that the mortgage may be discharged of record; and that it shall be the duty of the secretary of this state and the clerk of the county in which any such mortgage shall be registered, to enter such certificate in like manner as is directed in cases of private mortgages.

III. *And be it further enacted*, That the entry of such certificate in the manner aforesaid, shall operate as a complete discharge of the mortgage therein mentioned; and that the person at whose request the entry shall be made, shall pay to the said secretary or clerk the sum of thirty-seven and an half cents.

An ACT relative to the Managers of Lotteries.

Passed April 13, 1813.

[S. sess. 36. 315.]

Power of the
managers.Vacancies
how to be fill-
ed.They shall
give security.

Their oath,

Penalty for
violating their
oath.

I. *BE it enacted by the People of the state of New-York, represented in Senate and Assembly,* That the managers appointed to conduct any lotteries now authorised, or hereafter to be authorised by law, shall have power to adopt such schemes, as to them shall appear proper, to sell the tickets in the manner herein after mentioned, to superintend the drawing of the same, and the payment of the prizes thereof: *And further,* that vacancies by death or otherwise shall from time to time be supplied by the person administering the government of this state, who is hereby authorized and empowered to appoint suitable persons to supply such vacancies as may from time to time occur.

II. *And be it further enacted,* That each of the said managers shall, before he takes upon himself the management of the said lotteries, enter into a bond to the people of this state, with such sureties as the comptroller of this state for the time being shall approve, in the sum of thirty thousand dollars, conditioned for the faithful and honest discharge of the duties required of him by this act, and for rendering a just and true account of all their proceedings at the next session of the legislature after the drawing of each of the said lotteries: *And further,* the said managers shall respectively, before they enter on the duties of their appointment, take and subscribe the following oath or affirmation before some magistrate competent to administer oaths, to wit: "I do solemnly swear (or affirm as the case may be) that I will well and faithfully execute the trust reposed in me as one of the managers of the lottery (or lotteries) established by law, without favor or partiality, and that I will not directly or indirectly authorise or permit the sale of any tickets in any such lottery in which sale or sales I, or any person at my instance, or on my behalf, shall be directly or indirectly benefitted or interested, or entitled to any profit or advantage whatever thereon: which oath shall be filed in the office of the secretary of this state; and if any manager of any such lottery as aforesaid shall violate his said oath, or ask, demand or receive, either directly or indirectly, contrary to the true intent and meaning of the said oath, any advance on the stated price of lottery tickets which such manager may sell or dispose of, under any pretence whatsoever, shall for each offence forfeit the sum of one thousand dollars, to be recovered in the name and to the use of any person who will sue for the same, with the costs of suit, in any court of record within this state, and shall besides be liable to suffer the pains and penalties of wilful and corrupt perjury, and shall moreover be answerable and liable to the people of this state for all neglects, defaults, misfeasances and other acts of such managers, or any or either of them, in any action or actions at common law as the case may require: *Provided,* That the provisions of this section shall not be so construed as to apply to the managers of

lotteries already appointed, and who have before the passing of this act entered into bonds according to law.

III. *And be it further enacted*, That it shall not be lawful for any such manager as aforesaid, directly or indirectly, to contract for or be concerned with any company in contracting for any part or portion of the tickets of the said lottery of which he or they are managers. They are prohibited from purchasing tickets.

IV. *And be it further enacted*, That each of the said managers shall, as often as he shall receive five hundred dollars from the sale of tickets, pay the same to the treasurer of this state, or to the bank of New-York, for the use of this state, and the receipt for the payment of money to the bank shall be immediately transmitted to the comptroller. Monies how to be deposited

V. *And be it further enacted*, That the said managers shall, for the space of sixty days after opening any lottery for sale, sell the tickets therein at the original price, but without giving any credit; and the managers shall, at the expiration of the said sixty days, or within ten days thereafter, expose to sale at public auction in the city of New-York, the tickets remaining in their hands unsold, giving notice of such sale at least twice a week in at least three of the public newspapers published in the city of New-York, and in at least two published in the city of Albany; and the said tickets to be so sold at auction shall be sold in parcels not exceeding fifty, and on credit, payable twenty days after the drawing of the lottery, with interest at the rate of three per cent. per annum, and the said tickets shall not be sold for a less sum than the original price of such tickets; and the securities to be taken for the payment of the said tickets so sold on credit shall be taken in the name of the managers present at the sale, and of the comptroller of this state, and be approved by the said comptroller and a majority of the said managers; and it shall be the duty of all the managers and of the comptroller to attend at every such sale, and the said securities shall be placed for safe keeping and for collection, either in the bank of New-York, or in the New-York state bank, and when collected, the amounts shall be placed to the credit of the treasurer of this state, and notice be given to the comptroller of the payment. For 60 days after opening the lottery tickets to be sold at the original price: After that to be sold at auction, and on credit.

VI. *And be it further enacted*, That within thirty days after the completion of the drawing of any lottery, the tickets of which shall have been sold in pursuance of the directions of this act, the treasurer shall, on the warrant of the comptroller, pay to the managers respectively such sum as shall appear to be the amount of the prizes drawn to the tickets signed by them respectively, and shall also pay on a like warrant, to the persons entitled thereto, the avails of such lottery, and the managers shall furnish the comptroller within twenty days after the drawing of any lottery with a statement, shewing the amount of prizes in such lottery payable by each manager. Security to be taken for the payment.

VII. *And be it further enacted*, That the managers shall, within ten days after the expiration of sixty days after the drawing of each lottery, exhibit to the comptroller a statement of the prizes signed by them respectively, remaining unpaid, and pay the amount of such prizes into the treasury of this state, and the Treasurer to pay for prizes.

Statement of prizes to be exhibited to the comptroller.

said prizes shall thereafter be paid by the treasurer, on the warrant of the comptroller.

Comptroller directed to report managers for neglect.

VIII. *And be it further enacted*, That whenever it shall appear satisfactorily to the comptroller, that any manager has not paid the monies arising from the sale of tickets agreeably to law, it shall be lawful, and it is hereby made the duty of the comptroller, to report the same to the governor of this state, who shall thereupon appoint some other person in the room of such delinquent, to perform the duties of a manager as aforesaid; and the comptroller shall forthwith, after discovery of such delinquencies, cause a suit or suits to be instituted against such delinquent manager, for the recovery of the sum received by him, as well as to account generally for his management.

Managers to be allowed 15 per cent on the sums raised.

IX. *And be it further enacted*, That on the final settlement of the accounts of the several lotteries hereafter to be drawn in this state, the comptroller shall allow fifteen per cent. on the sum raised by each lottery to the said managers, in lieu of all compensation for services and expenses in conducting and drawing the same.

Copy of scheme to be transmitted to the comptroller.

X. *And be it further enacted*, That managers, whenever they agree on the scheme of any lottery, and on the number of tickets which they are respectively to sign, shall transmit to the comptroller a copy of their scheme, and an account of the number of tickets which they are to sign respectively.

THIRTY-FIFTH SESSION.

CHAP. I.—(R.L.)

An ACT concerning the State-Prison.

Passed May 21st, 1812.

[S. sess. 35. 49.]

State prison.

Inspectors thereof to be appointed.

How often to meet.

Inspectors, Judges of the Supreme Court, &c. to make rules for the government of the prison.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the public building erected in the city of New-York for the reception of convicts, shall be called the "State Prison;" and that the persons administering the government of this state, by and with the advice and consent of the council of appointment, shall, as often as may be requisite, appoint such number of persons, not exceeding seven, as may be necessary to form a board of inspectors therefor; and that the said inspectors shall meet at the prison once at least in every month, and oftener if necessary, or if required by the visiting inspectors hereinafter mentioned; and that the said inspectors, together with the justices of the supreme court, the mayor and recorder of the city of New-York, the attorney-general, and the district attorney for the district in which the said city shall be comprehended, or a majority of them, shall have power from time to time to make such rules as they shall think proper for the government of the convicts confined in the state prison, their diet, clothing and maintenance, and for all other interior regulations for the said prison, not inconsistent with the laws and constitution.

tion of this state, and the intention of this act. And the said inspectors shall appoint two or more of their number to be a visiting committee, and renew such appointment at least once in every month; whose duty it shall be to visit the prison, once at least in every week.

II. *And be it further enacted*, That the inspectors shall have the charge and custody of the prison, and prisoners therein, and they may appoint and employ under them a principal keeper, a deputy keeper, and as many assistant keepers as they shall deem proper: and whenever there shall happen to be no principal keeper, all the duties and power of principal keeper shall devolve and be executed by the deputy keeper, until a principal keeper shall be appointed: and all writs of habeas corpus to be granted in behalf of any person confined in the said prison shall be directed to, and returned by the keeper of the said prison for the time being.

Inspectors to have charge of the prison, and to appoint its officers.

Writs of habeas corpus to be returned by the keeper.

III. *And be it further enacted*, That it shall and may be lawful for the inspectors of the state prison to appoint an agent, who shall, previous to his entering on the duties of his office, give such security for the faithful performance thereof as the said inspectors shall require, and whose duty it shall be, under the direction of the said inspectors, to attend daily at the said prison, to view and superintend all the business thereof, to examine whether the keepers have been careful and vigilant, and to enquire generally into the state of the prison, as well as the health, conduct and safe keeping of the prisoners; and to employ them in useful work, in such manner as will be most beneficial to the public, and suitable to their various capacities; to purchase their provisions, and articles for their clothing and bedding, and the provision for the keepers; and also to purchase the tools and implements necessary for the convicts, and all the raw materials to be manufactured; of all which he shall render a weekly account for the examination of the inspectors, or visiting committee. And it shall also be the duty of the said agent to superintend all the manufacturing and mechanical business that is or may be carried on within the said prison, and receive the articles so manufactured, and dispose of the same for the benefit of the state, under the direction of the said inspectors. And that the said inspectors shall appoint one or more clerks to keep the books and accounts of the state prison, and to assist the agent in the performance of his duty.

The inspectors to appoint an agent.

His duty.

IV. *And be it further enacted*, That all the contracts and dealings on account of the said institution, shall be transacted by and in the name of the agent of the state prison; and by that name the present agent and his successor in office shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places, and in all actions and suits, complaints, matters and causes concerning the state prison. And by that name the agent for the time being shall be and hereby is authorized and empowered to sue for, prosecute, recover and receive, of and from all persons indebted to any former agent or inspectors of the state prison, or to the people of this state on account there-

All contracts to be made in the name of the agent.

His powers

He may sue for and recover all debts due to former agents or inspectors.

of, such sums of money as shall be due, or become due, of and from any person or persons.

He may appoint factors under him.

The factors to give security.

V. *And be it further enacted*, That the agent may with the consent of the inspectors, appoint such person or persons as may be necessary, from time to time, to act under his direction as factor or factors, who shall, before he or they enter on the duties of his or their appointment, give such security to the said agent as he may require, for the faithful performance of the duties of such factor or factors, and who shall aid in the disposal of the goods manufactured in the prison, and make a monthly report to the said agent of all sales by him or them made, and of the proceeds thereof, and shall also at the same time account and settle with the said agent for the same to his satisfaction; for which services he or they shall be allowed a commission not exceeding seven per cent.

The agent shall report annually to the comptroller.

VI. *And be it further enacted*, That it shall be the duty of the agent of the state prison, annually, on or before the third Monday of February, to render to the comptroller a full and true account on oath of all monies received by him on account of the state prison, and of all the monies expended or appropriated by him for the use thereof, with sufficient vouchers for the same, and also an account of the goods manufactured and sold, and an inventory of the goods and raw materials on hand, exhibiting a complete detail of the transactions of the prison, for the year ending on the first day of January, preceding.

The agent shall endeavor to collect outstanding debts. He shall report bad debts and in future shall not give credit longer than six months.

VII. *And be it further enacted*, That it shall be the duty of the agent for the state prison, in all cases possible, to collect or secure the payment of all outstanding debts, and to specify in his annual report to the comptroller, as nearly as may be, the amount of bad debts: and it shall not in future be lawful for the said agent to sell any article manufactured in the state-prison on a credit of more than six months.

When disputes arise between the agent and any person.

VIII. *And be it further enacted*, That it shall and may be lawful for the agent of the state-prison, whenever any dispute or controversy shall arise relative to any claim or demands which any person or persons now or hereafter may have against the agent of the prison, or any claim or demand which the said agent may now or hereafter have against any person, to refer the same to arbitration, of two or more persons mutually chosen by the said agent, and the person or persons with whom such controversy may exist.

the same shall be referred to arbitration.

The agent shall take charge of the property of prisoners when applied to by them. Their property how applied.

IX. *And be it further enacted*, That on the application of any prisoner or prisoners confined in the state-prison to the agent, requesting him to take charge of his, her, or their property, the agent be empowered to collect and receive, and sue for any goods, chattles, or monies due, or belonging to such prisoner or prisoners, and to keep a correct account thereof, and to pay the amount to said prisoner or prisoners, when released, or to his, her, or their legal representatives. And if such prisoner or prisoners should not be released, and if no legal representative should demand such property, then and in that case, the same shall be applied to the use of the state.

X. *And be it further enacted,* That no person acting as inspector of the state-prison shall at the same time be competent or permitted to act as agent. An inspector incompetent to act as agent.

XI. *And be it further enacted,* That it shall be the duty of the comptroller to examine the accounts of the agent, and lay a statement thereof before the legislature, on or before the second Monday of March, annually. The comptroller to examine the agent's accounts.

XII. *And be it further enacted,* That it shall be deemed an offence against the people of this state, for any deputy or assistant keeper of the said prison, or any workman employed in or about the prison, or for any other person, to convey out of, or bring into the prison any letter or writing, or any other thing whatsoever, without being examined by one of the inspectors, the agent or keeper. Bringing letters to or conveying the same or any other thing out of the prison without the agent's consent declared a public offence.

XIII. *And be it further enacted,* That it shall be unlawful for the principal keeper of the said prison, or his assistants, or any person whomsoever, to introduce into, or give away, or barter or sell, within the said prison, any spirituous or fermented liquors, excepting only such as are necessary for the keepers, or their families, or permitted by the inspectors, or ordered by the attending physician : and for all such offences the person or persons offending shall forfeit the sum of twelve dollars and fifty cents, to be recovered with costs of suit, before any justice of the peace of the city and county ; the one moiety of which shall be for the benefit of the prosecutor, and the other for the inspectors, for the purposes herein mentioned. Penalty for introducing spirituous liquors into the Prison.

XIV. *And be it further enacted,* That such convicts as aforesaid who shall be sentenced to imprisonment in the state-prison, shall be clothed in habits of coarse materials, and be sustained upon a sufficient quantity of inferior, but wholesome food, at the discretion of the said inspectors, and shall be kept, as far as may be consistent with their sex, age, health, and ability to labor, in such manner as shall be deemed just and right. Clothing and food of the convicts.

XV. *And be it further enacted,* That in all cases where any person shall be adjudged to imprisonment in the state-prison, all expenses and charges to arise in conveying such offender to the same, shall be defrayed out of the treasury of this state ; and also all sums of money and suitable rewards paid for advertising and apprehending any convict or convicts who may have escaped from the said prison. Charges of conveying convicts to the prison defrayed by the state.

XVI. *And be it further enacted,* That when any person shall be convicted and sentenced to imprisonment in the state-prison, the clerk of the court in which such sentence shall be passed shall make and certify a copy thereof, and deliver the same to the sheriff, who shall, when he conveys such convict to the said prison, deliver the said copy with the said convict to the keeper of the said prison, and receive from the said keeper a certificate of such delivery of the said convict, and the sheriff shall be allowed for the support and maintenance of such convicts, at and after the rate of one dollar per day for each and every convict so conveyed and delivered by him, together with the other reasonable expenses attending the conveyance of such convict or convicts, and shall in addition thereto be entitled to and receive for Where a person is convicted the clerk of the court shall give a copy of the sentence to the sheriff.

Sheriff's allowance for conveying convicts to the prison.

his services in conveying such convict or convicts as aforesaid, at and after the rate of twenty-five cents per mile, to be computed from the place at which such sheriff may have received such convict or convicts ; but no other or further charge of mileage shall be allowed for conveying two or more convicts as aforesaid, than for the conveyance of one ; all which monies shall be paid to the sheriff performing the said services, out of any money in the treasury not otherwise appropriated.

Sheriffs shall have power to call assistance when conveying convicts to the prison.

XVII. *And be it further enacted*, That the sheriffs of the several counties within this state, during the time that they or either of them shall be conveying to the prison any person convicted in any of the counties within this state, shall have the same power, and the like authority, to demand the assistance of any of the people of this state, in securing every such person as if such sheriff were in the county for which he is appointed sheriff : and all persons shall be aiding and assisting such sheriff, under the same penalties as if such sheriff was in his proper county.

Prison guard.

XVIII. *And be it further enacted*, That the state-prison guard shall consist of one captain, to be appointed by the person administering the government of this state, by and with the advice and consent of the council of appointment ; one serjeant, two corporals, one drummer, one fifer, and not more than twenty privates, who shall be natives of the United States, and not less than twenty-one, nor more than forty years of age, excepting the captain, and they shall engage themselves for the term of three years at least. *Provided however*, That the person administering the government of this state for the time being may discharge them sooner if he shall think proper so to do.

Pay.

Their monthly pay.

XIX. *And be it further enacted*, That the monthly pay of the said guard shall be as follows : that of the captain shall be forty-eight dollars ; that of the serjeant twenty-five dollars ; that of the corporals, drummer and fifer, twenty-two dollars ; and that of the privates nineteen dollars ; which shall be in lieu of every compensation, except the articles herein after enumerated.

To be furnished with arms, &c. by the state.

XX. *And be it further enacted*, That the said non-commissioned officers and privates shall be furnished with necessary arms, ammunition and accoutrements, at the expense of the state ; which arms and accoutrements shall be delivered over to the captain of the said prison-guard, at the expiration of their several terms of service, and shall wear such uniform as the person administering the government of this state for the time being shall direct, and shall also annually receive the following articles of uniform clothing, to wit : one hat, one coat, two vests, two pair of woollen and two pair of linen overalls, four pair of shoes, four shirts, four pair of socks, one blanket, one stock and clasp, one watch coat, every two years, and such fuel as may be deemed necessary.

To be furnished with uniforms.

Where to be stationed, and under whose direction.

XXI. *And be it further enacted*, That the said guard shall be stationed at or near the said prison, and shall be under the direction of the mayor of the said city, and shall obey all such orders, rules and regulations, as the said mayor may from time to time give or make, for the better and effectual guarding of the said prison for preventing escapes therefrom, and for apprehending

such of the convicts as may have effected their escape. *Provided however*, That it shall not be lawful for the said mayor to employ the said guard in any other way, or to demand any other service or duty from them than such as relate immediately to the safe keeping of the prisoners.

XXII. *And be it further enacted*, That the mayor of the city of New-York shall from time to time inspect the said guard and report the state thereof at least once in every three months to the person administering the government of the state for the time being, and may in his discretion direct the discharge of any non-commissioned officer, musician or private, belonging to the said guard, and cause all vacancies to be filled by new engagements, and on the representation of the inspectors of the state prison may suspend the captain of the said guard from the execution of his duties, until the sense of the council of appointment be had in the premises: and that the said mayor, together with any two of the inspectors of the state prison, shall from time to time make and establish rules, regulations and orders, for the better government of the said guard, for the trial of all offences against discipline, and for inflicting proper punishments for breaches thereof, not exceeding a fine of one month's pay, and sixty days imprisonment, in such place as the court shall direct.

The mayor of New York to inspect the guard once every three months.

On representation of the inspectors may suspend the captain.

Rules may be made by the government of the guard.

XXIII. *And be it further enacted*, That it shall be the duty of the officer commanding the said guard to make a weekly return of the said guard to the said mayor.

The officer commanding the guard to report weekly.

XXIV. *And be it further enacted*, That if any non-commissioned officer or private shall desert from the said guard, he shall, on conviction by a jury, be sentenced to imprisonment in said prison, for a term not exceeding five years: and it shall and may be lawful for the agent of the state prison to pay from time to time such sums of money as he may deem necessary, for the purpose of advertising, apprehending and securing deserters, and furnishing substitutes with clothing.

Punishment for deserting from the guard.

XXV. *And be it further enacted*, That no officer, non-commissioned officer, drummer, fifer or private, belonging to said guard, shall board and lodge at any other place than at the barracks erected for that purpose.

The guard shall board and lodge in the barracks.

XXVI. *And be it further enacted*, That all and every of the persons now belonging, or shall hereafter at any time belong to the state prison guard, shall for and during the time of their continuance in service in such guard be and remain free from all arrests by civil process.

Persons serving in the guard shall be free from arrests on civil process.

XXVII. *And be it further enacted*, That the treasurer of this state shall from time to time pay to the agent, by order of the inspectors of the said prison, or any two of them, on the warrant of the comptroller, such sums as shall appear to the comptroller necessary for the payment of the said guard, and for the purchase of the arms, ammunition and accoutrements, and the other articles with which they are to be furnished as aforesaid.

How the guard shall be paid.

XXVIII. *And be it further enacted*, That the agent shall be allowed at and after the rate of two thousand dollars per annum: and the clerk or clerks shall receive such sum or sums for their services as the said inspectors shall direct, not exceeding the

Salary of the agent.
of the clerks.

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which said salaries shall be
of the agent, signed by at
shall be lawful for the said in-
officers, or any or either of them,
the interest of the institution shall

enacted, That the inspectors, and the
any duty in the said state prison, shall
continuance in office from serving on

enacted, That it shall be lawful for the
the said state prison, by and with the advice and con-
of the said city of New-York, if in their opinion
of an hostile force, or other urgent occasion, shall
expedient, to remove the convicts in the said prison to
places of security in the state as they shall judge fit.
enacted, That it shall be the duty of
the inspectors of the said prison to transmit to the legislature, an-
on or before the third Monday of February, a report, ex-
hibiting a complete and comprehensive view of their transactions
during the preceding year ; of the number of convicts confined in
the said prison, of the various branches of business in which they
are employed, and the number of convicts in each branch, and
the nett profits if any, arising therefrom ; and shall also in their
said report, with the assistance of the attorney-general, or district
attorney, propose for the consideration of the legislature such al-
terations and improvements in the penal laws, or in any of the
laws and regulations relative to the said prison, as they may from
time to time deem useful and necessary.

XXXII. And be it further enacted, That the persons authoris-
ed to visit and inspect the prison at pleasure, shall be, the govern-
or, lieutenant-governor, members of the legislature, chancellor,
judges of the supreme court, and mayor, recorder, and other
members of the common council of the city of New-York, attor-
ney-general, district attorney, and such ministers of the gospel
as actually reside in the city of New-York, and have charge of a
church or congregation therein : And no other person shall be
permitted to enter within the walls where the convicts are confin-
ed, without a written license, signed by the agent, or one of the
inspectors : and every person so permitted, who is not related to
the convict, or person visited, and hath not pecuniary or neces-
sary business to transact, shall pay to the agent of the prison
twelve and an half cents for such visit, which shall, under the di-
rection of the inspectors, be applied to the purchase of religious
books for the use of the convicts. And it shall be the duty of the
keeper, to deliver to the clerk a monthly account of all such per-
mits, who shall charge the agent with the amount thereof.

Fees paid for
subsistence.

of the principal keeper.

of the deputy keeper.

sum of six hundred dollars annually to each, and the principal keeper of the said prison shall receive at and after the rate of eight hundred and seventy-five dollars per annum, and the maintenance of himself and family in the state prison, and the deputy keeper thereof at the rate of six hundred dollars, and the assistant keepers respectively three hundred dollars per annum for their services, and the said deputy and assistant keepers to be maintained also in the said prison : which said salaries shall be paid by the *comptroller*, on application of the agent, signed by at least four of the inspectors, and it shall be lawful for the said inspectors to remove the aforesaid officers, or any or either of them, whenever in their judgment the interest of the institution shall require it.

Persons employed about the state prison free from military duty.

XXXIX. *And be it further enacted*, That the inspectors, and the other persons performing any duty in the said state prison, shall be exempted during their continuance in office from serving on juries, and from military duty.

The inspectors may remove the convicts on urgent occasions.

XXX. *And be it further enacted*, That it shall be lawful for the inspectors of the state prison, by and with the advice and consent of the mayor of the said city of New-York, if in their opinion the approach of an hostile force, or other urgent occasion, shall render it expedient, to remove the convicts in the said prison to such place or places of security in the state as they shall judge fit.

They shall make a report annually to the legislature.

XXXI. *And be it further enacted*, That it shall be the duty of the inspectors of the said prison to transmit to the legislature, annually, on or before the third Monday of February, a report, exhibiting a complete and comprehensive view of their transactions during the preceding year ; of the number of convicts confined in the said prison, of the various branches of business in which they are employed, and the number of convicts in each branch, and the nett profits if any, arising therefrom ; and shall also in their said report, with the assistance of the attorney-general, or district attorney, propose for the consideration of the legislature such alterations and improvements in the penal laws, or in any of the laws and regulations relative to the said prison, as they may from time to time deem useful and necessary.

They may recommend alterations in the penal laws.

Persons admitted to visit the prison at pleasure.

XXXII. *And be it further enacted*, That the persons authorized to visit and inspect the prison at pleasure, shall be, the governor, lieutenant-governor, members of the legislature, chancellor, judges of the supreme court, and mayor, recorder, and other members of the common council of the city of New-York, attorney-general, district attorney, and such ministers of the gospel as actually reside in the city of New-York, and have charge of a church or congregation therein : And no other person shall be permitted to enter within the walls where the convicts are confined, without a written license, signed by the agent, or one of the inspectors : and every person so permitted, who is not related to the convict, or person visited, and hath not pecuniary or necessary business to transact, shall pay to the agent of the prison twelve and an half cents for such visit, which shall, under the direction of the inspectors, be applied to the purchase of religious books for the use of the convicts. And it shall be the duty of the keeper, to deliver to the clerk a monthly account of all such permits, who shall charge the agent with the amount thereof.

Fees paid for assistance.

Y^r 38. Sep. Ch. 13. Relative to the settlement of families of those in the service of the State &c

XXXIII. *And be it further enacted*, That the inspectors shall from time to time appoint a resident physician, who shall be lodged and victualled in the prison, and attend daily on the sick : and also such visiting physicians and surgeons as they may deem necessary, subject to such regulations as the board of inspectors may direct. And in case exigencies should require extraordinary services, a reasonable compensation may be made.

A resident physician may be appointed.

XXXIV. *And be it further enacted*, That the inspectors shall be and hereby are authorised to allow to such minister of the gospel as they shall from time to time approve of, any sum, annually, not exceeding two hundred and fifty dollars, for performing divine service for the benefit and reformation of the convicts.

Allowance to a minister to perform divine service.

XXXV. *And be it further enacted*, That it shall be the duty of the judges of the supreme court, or such of them as may be present at any of the terms of the supreme court held in the city of New-York, to recommend to the person administering the government of this state for the time being such convicts, other than those who are confined for life, for pardon, as they shall think fit objects of mercy.

The judges may recommend proper objects for pardon.

XXXVI. *And be it further enacted*, That if any vacancy shall happen in the board of inspectors, during the recess of the council of appointment, it shall be lawful for the person administering the government of this state for the time being, to fill all vacancies by new appointments, until the pleasure of the said council be had in the premises.

Governor may fill vacancies among the directors, in the recess of the council.

THIRTY-SIXTH SESSION.

CHAP. LXXVIII.—(R.L.)

An ACT for the relief and settlement of the Poor.

Passed April 8th, 1813.

[Br. ed. 6. 41. 62.—S.&L. v. 1. 65. 404.—Ibid. v. 2. 39. 146.—V. S. v. 1. 43. 275. 343. 438. 526. 570. 571.—Ibid. v. 2. 644. 750. 799.—J.&V. v. 2. 302.—Gr. v. 2. 133.—K.&R. v. 1. 566.—W. v. 5. 463. 471. 503.]

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly*, That every city and town shall support and maintain their own poor.

II. *And be it further enacted*, That every person who shall have come to inhabit in any city or town within this state, and shall actually and *bona fide* have rented and occupied a tenement, of the yearly value of thirty dollars, or upwards, for two years, and actually paid such rent, or shall, for himself or on his own account, have executed any public annual office or charge in such city or town during one whole year, or who shall have been charged with, and paid his or her share towards the public taxes of such city or town, for the space of two years ; and every person who shall have been bound an apprentice or servant by indenture, or by any deed, contract or writing not indentured, and shall in consequence of such binding, have served a term not less than two years in such city or town, shall be deemed and adjudged to have obtained a legal settlement in such city or town ; and that all mariners, coming into this state and hav-

Every city & town to maintain their own poor.

K.&R.v.1.566

51.

12 R. 2. c. 7

11 H. 7. c. 3

13 R. 14. Car. 2.

c. 12

4 Com dig. 508

R. 66.

A settlement how gained

K.&R. v. 1.

506. § 2

13 R. 14. Car. 2.

c. 12.

3. W. & M. c. 11

2 R. 9. W. 3 c. 39

2 R. 10. W. 3 c. 11

27. H. 8. c. 25

12 Ann. st. c. 25

9. Geo. 1. c. 7

21. Geo. 2. c. 19

19 H. 7. c. 17

22. H. 8. c. 2.

1. Ed. 6. c. 2.

3 R. 4. Ed. 6. c. 10

5 R. 6. Ed. 6. c. 2.

253. Ph. & M.
c. 5.
6. El. c. 3.
14. El. c. 4, §
18. El. c. 3.
35. El. c. 7.
39. El. c. 3, 4.
43. El. c. 2.
18. Geo. 3. c. 26.
Carth. 433.
Comb. 364.
2. Bul. 350, 352.
Salk. 527. 4. 5.
2. Ld. Raym. 67.
2. Ld. Raym.
1473.
1. Str. 544.
W. v. S. 353. §1.
2. Causes' Hep.
206.
1 John. Rep.
480.

W. v. S. 471. §2.
6. John. Hep. 62.
Bastard's settle-
ment fol-
lows the mo-
ther's.
K. & R. v. 1. 506.
Vid. English-
statutes supra.
17. Geo. 2. c. 5.
3. Salk. 65.
3. John. Hep. 15.
Purchase of
an estate when
& how to gain
a settlement.
K. & R. v. 1. 506.
§ 4.
6. Geo. 1. c. 7. § 5.
Str. 97. Fort 303.
B. S. C. No. 4. 17.
124 179, 182.
1 D. & E. 241.
3 D. & E. 114.
One year's
residence in
certain cases
to gain a set-
tlement.
1. Jac. 2. c. 17.
3 & 4. W. c. 11.
35 & 14. Car. 2. c.
15.
K. & R. v. 1. 506.
§ 5.

Notice under
preceding sec-
tion to be
registered.
K. & R. v. 1. 506.
§ 6.
3 & 4. W. & M.
c. 11.

Overseers of
the poor may
cause stran-

ing no settlement in this state, or in any other of the United States of America, and every other healthy able bodied person, coming directly from some foreign port or place into this state, shall be deemed and adjudged to be legally settled in the city or town in which he or she shall have first resided for the space of one year: *Provided always*, That the person or persons who may have, or hereafter shall come into the city of New-York, from any other state within the United States of America, shall not be deemed and adjudged legally settled under this section, unless the party shall first prove to the satisfaction of the commissioners of the almshouse and bridewell of the said city, that after his or her arrival therein, he or she, as the case may be, shall have acquired such requisites to constitute a settlement, as are necessary in and by the laws of such state from whence he or she may have come as aforesaid: *And provided further*, That the assessment and performance of labor on any highway in any city or town, shall not be considered a tax within the meaning of this act.

III. *And be it further enacted*, That every bastard child shall be deemed and adjudged to be settled in the city or town of the last legal settlement of his or her mother.

IV. *And be it further enacted*, That no person shall be deemed to gain a settlement in any city or town within this state, by virtue of any purchase of any estate or interest in such city or town, whereof the consideration for such purchase shall not amount to the sum of seventy-five dollars *bona fide* paid, for any longer or further time than such person shall inhabit in such estate, and shall thereafter be liable to be removed to the city or town where such person was last legally settled before the said purchase and inhabitation therein.

V. *And be it further enacted*, That if any person, other than those herein before mentioned, coming into any city or town, shall, within forty days after such person's coming into such city or town, deliver a notice in writing, to any two overseers of the poor of such city or town into which such person shall so come to reside, of the house or place of his abode, and the number and names of his family, if he shall have any, which notice such overseers of the poor are hereby required to cause to be registered, within forty-eight hours after the receipt thereof, in the book kept in such city or town, for the accounts of the poor, and in case the overseers of the poor of such city or town shall not within twelve months after such notice, cause such persons to be removed out of such city or town in the manner herein after mentioned, then and in such case the person so giving notice as aforesaid, shall be deemed and adjudged to be legally settled in such city or town.

VI. *And be it further enacted*, That if any overseer of the poor shall refuse or neglect to register or cause to be registered such notice in writing as aforesaid, in such time and manner as aforesaid, he shall for every such refusal or neglect, forfeit the sum of five dollars to the use of the party aggrieved, to be recovered with costs of suit in any court having cognizance thereof.

VII. *And be it further enacted*, That if any overseer of the poor of any city or town shall have reason to believe that any

stranger who shall have come to reside in such city or town, and who shall not have obtained a legal settlement therein, is likely to become chargeable to such city or town, such overseer shall apply to any two justices of the peace of such city or of the county in which such town shall live, and inform them thereof; and the said justices being so, or otherwise, informed, or suspecting such stranger to be of insufficient ability, or likely to become a charge to such city or town, are hereby authorised and required to issue their warrant to a constable of such city or town, there by commanding him to bring such stranger before them, at such time and place as they in their said warrant shall for that purpose appoint; and the said justices shall examine every stranger so brought before them, and any other person whom they may think necessary upon oath, relating to the abilities and last place of legal settlement of such stranger; and if upon such examination, the said justices shall find such stranger likely to become a charge to such city or town, they shall order and direct such stranger by a certain day to remove to the place of his former settlement, and on neglect or refusal to comply with the said order, the said justices shall issue a warrant under their hands and seals, directed to any constable of such city or town, who is hereby required and commanded to execute such warrant, thereby commanding him to convey or transport such stranger to the constable of the next city, or first town in the adjoining county, or if within the same county, to the town where the pauper was last legally settled, through which such stranger shall have been suffered to wander unapprehended, and so from constable to constable, or in such other manner, by the nearest and most convenient route as the said justices shall think fit to direct to the place of legal settlement of such stranger, if the same shall be within this state; or in case it shall appear that the said pauper first came into this state through the city of New-York, and it shall not appear that the said pauper has acquired a settlement in this state, then, and in such case, it shall be lawful for the said justices to direct by the said warrant that the said pauper be transmitted from constable to constable, or otherwise, to the city of New-York.

VIII. *And be it further enacted*, That if any inhabitant of this state shall receive or entertain in his dwelling-house, out-house or family, for the space of fifteen days, any person who hath not gained a settlement in some city or town within this state, and shall not within the time aforesaid, give notice in writing to one of the overseers of the poor of such city or town of the name, quality, condition and circumstances of the person so entertained, according to the best knowledge of such inhabitant, every such inhabitant shall, for every such offence, forfeit the sum of five dollars, to be recovered with costs of suit, before any court having cognizance thereof, by any person who shall sue for the same; one half of which forfeiture when recovered, to be paid to the overseers of the poor of such city or town, and the other half to the person who shall sue for the same as aforesaid: *And further*, If the person so entertained as aforesaid, shall have remained in any city or town longer than the term of forty days, then it shall be law-

gers whom they apprehend may become a charge to be examined.

K. & R. v. 1. 506 § 7

1. Jac. 2. c. 17

17. Geo. 2. c. 5 § 6 23

13. & 14. Cas. 2 c. 12

[N. B. Warrants called

vagrant passes or travelling

warrants, no longer in force

except in two cases only in

a qualified & limited man-

ner—vide the conclusion of this section, &

the case of slaves in the last section.]

1 John. Rep. 33 239.

2 John Rep. 29

And upon examination

they may be removed to their place of settlement.

[Who are competent witnesses to prove a settlement.

1 John Rep 485]

2 John Rep. 175

No inhabitant to entertain a stranger more than 15 days, without giving notice to the overseers of the poor.

K. & R. v. 1. 506 § 8

Penalty.

And the person entertaining such stranger, bound to

county inhabitants such stranger information of such inhabit- poor of such city no hundred and fifty shall not become a any of the said persons as aforesaid, being in the sufficient ability, shall re- shall be lawful for the said or their hands and seals, di- or town, to cause such per- son gaol of such city or of the shall lie, there to remain until such come bound as aforesaid; but if the n stranger shall not, in the opinion of of sufficient ability to become bound as the said justices shall not think fit to take such shall cause such stranger to be conveyed from in manner aforesaid, until he shall be in the place of his or her last settlement, if within

And be it further enacted, That any constable transport- ing a pauper from one town to another, by virtue of shall receive so much money for his services as the su- of such county shall judge he reasonably deserves to be, which money shall be raised, collected and paid, in the same manner as other monies for the contingent charges of such county.

X. And be it further enacted, That if any person be remov- ed by virtue of this act, from one city or town to another, within this state, the overseers of the poor of the city or town to which the said person shall be so removed, are hereby re- quired to receive the said person, and if they or any of them, shall refuse or neglect so to do, the overseer so refusing or ne- glecting shall, if thereof convicted by the oath of two witnesses, forfeit and pay for each offence the sum of twenty-five dollars, to the use of the poor of the city or town from which the said per- son was so removed, to be recovered with costs of suit in any court having cognizance thereof, by the overseers of the poor of such city or town from which such person was so removed: *Pro- vided always,* That no person nor any child belonging to such person shall gain a settlement in the city or town to which he or they shall be so removed, but his or their settlement shall re- main as before such removal.

XI. And be it further enacted, That in case of the division of any town, the supervisors and overseers of the poor of the several towns erected by such division, shall without delay di- vide and apportion the money appropriated for the support of the poor, and the poor belonging to such town so divided, in pro- portion to the last tax list; and the poor so apportioned, shall be

If towns are divided, how poor to be supported, & where settled.

[illegible]

maintain him, if able to do so.

ful for any two justices of the peace of such city, or of the county in which such town shall be, to cause such of the inhabitants of such city or town who shall have so entertained such stranger during the term of fifteen days, without giving information thereof as aforesaid, to be brought before them, and such inhabitants shall enter into bond to the overseers of the poor of such city or town, and their successors, in the sum of two hundred and fifty dollars, conditioned that such stranger shall not become a charge to such city or town; and in case any of the said persons who shall have entertained such stranger as aforesaid, being in the opinion of such justices of the peace of sufficient ability, shall refuse to become bound as aforesaid, it shall be lawful for the said justices of the peace, by warrant, under their hands and seals, directed to any constable of such city or town, to cause such person to be committed to the common gaol of such city or of the county in which such town shall lie, there to remain until such person shall consent and become bound as aforesaid; but if the person so entertaining such stranger shall not, in the opinion of the said justices, be of sufficient ability to become bound as aforesaid, or if the said justices shall not think fit to take such bond, then they shall cause such stranger to be conveyed from constable to constable, in manner aforesaid, until he shall be transported to the place of his or her last settlement, if within this state.

And if not able, the stranger shall be removed to his place of settlement if within this state.

Constables removing paupers, how to be paid. K. & R. v. 1. 569 Secs. 33. ch. 109. § 5.

IX. *And be it further enacted*, That any constable transporting or conveying a pauper from one town to another, by virtue of this act, shall receive so much money for his services as the supervisors of such county shall judge he reasonably deserves to have, which money shall be raised, collected and paid, in the same manner as other monies for the contingent charges of such county.

Overseers of the poor bound to support the paupers duly removed. K. & R. v. 1. 566. § 11 43. El. c. 2.

X. *And be it further enacted*, That if any person be removed by virtue of this act, from one city or town to another, within this state, the overseers of the poor of the city or town to which the said person shall be so removed, are hereby required to receive the said person, and if they or any of them, shall refuse or neglect so to do, the overseer so refusing or neglecting shall, if thereof convicted by the oath of two witnesses, forfeit and pay for each offence the sum of twenty-five dollars, to the use of the poor of the city or town from which the said person was so removed, to be recovered with costs of suit in any court having cognizance thereof, by the overseers of the poor of such city or town from which such person was so removed: *Provided always*, That no person nor any child belonging to such person shall gain a settlement in the city or town to which he or they shall be so removed, but his or their settlement shall remain as before such removal.

Penalty.

Priso.

If towns are divided, how poor to be supported, & where settled.

XI. *And be it further enacted*, That in case of the division of any town, the supervisors and overseers of the poor of the several towns erected by such division, shall without delay divide and apportion the money appropriated for the support of the poor, and the poor belonging to such town so divided, in proportion to the last tax list; and the poor so apportioned, shall be

deemed to belong to the town to which they may be thus apportioned; and in case any poor person who shall have been an inhabitant of any town so divided, and legally settled therein, shall return into either of the said towns, such poor person shall be maintained by the town, including the part of the town so divided in which such poor person was last legally settled or had resided.

XII. *And be it further enacted*, That if any person who shall think proper to remove out of any city or town within this state, into any other, there to inhabit or reside, and shall at the same time procure and deliver to the overseers of the poor of the city or town where such person shall so come to inhabit or reside, or to any one of them, a certificate under the hands and seals of the overseers of the poor or of any two of them, of the city or town of such person's last legal settlement, attested by two or more credible witnesses, thereby owning or acknowledging the person mentioned in such certificate, to be an inhabitant legally settled in the city or town mentioned in such certificate, which certificate shall be either acknowledged by the overseers of the poor giving the same, or shall be duly proved by the witnesses who shall have attested the execution thereof, or one of them, before any justice of the peace of the city or of the county wherein the town from whence any such certificate shall come shall be, and shall be approved of and subscribed by such justice of the peace, then it shall be lawful for every such person with his family, if any, upon the delivery of such certificate as aforesaid, to remain in any such city or town to which such person shall remove as aforesaid, and to follow any employment within the same; and the overseers of the poor shall deliver every such certificate to the town clerk of the city or town in which any such person shall come to reside as aforesaid, who is hereby required to file and record the same: *And further*, That every such certificate so acknowledged or proved and allowed as aforesaid, shall be deemed in all courts whatsoever within this state as duly proved, and shall be taken and received as evidence, without any other proof thereof.

XIII. *And be it further enacted*, That whenever any person with his family, if any, or any part thereof, so remaining by virtue of the certificate aforesaid, shall become chargeable or be obliged by sickness or otherwise, to ask relief of the city or town into which such person was received as aforesaid, then, and not before, it shall be lawful for any two justices of the peace of the city or county into which such person was received by virtue of such certificate, to remove and convey every such person with his family and children, though born in such city or town, and servants and apprentices, not having otherwise acquired a legal settlement there, to the city or town from which such certificate was brought as aforesaid, the overseers of the poor of which city or town are in such case hereby required and obliged to receive and provide for every such person and his family as aforesaid.

XIV. *And be it further enacted*, That no person who shall come to reside in any city or town by virtue of any such certificate, shall be deemed or adjudged by any act whatsoever, of such person, to have gained a legal settlement in such city or town

John Rep 163

Paupers receiving certificates of settlement, may live in any town.
K&R v 1,566,
§ 13
S. O. W. 3. c. 30.
S. G. 2. c. 29.

Certificates how obtained and proved.

When certificate poor may be removed.
K&R v 1,566
§ 13.
S. O. W. 3. c. 30
S. Geo. 2. c. 29.

Certificates poor not to gain a settlement out of their town by any act except the purchase of free

hold estate,
renting a tenement or sit-
ting in a pub-
lic office, &c.
K. & R. v. 1. 566
§ 14.
6 Geo. 1. c. 7.
12 Ann. c. 18.
6. 10 W. 3. c. 11

during the time such person shall reside there by virtue of such certificate, unless such person shall *bona fide* purchase a freehold of the value of seventy-five dollars, or upwards, or *bona fide* have rented and occupied a tenement of the yearly value of thirty dollars or upwards, for two whole years, or shall have executed a public annual office or charge in such city or town for one whole year as aforesaid.

The town giving a pauper a certificate, liable for his maintenance elsewhere, and also for his removal.
K. & R. v. 1.
566 § 18
Vide statutes referred to *supra*.

XV. *And be it further enacted*, That when any person or his family residing in any city or town, or sent thither by certificate, and becoming chargeable as aforesaid, shall be removed back to the city or town to which such person shall belong, the overseers of the poor shall be reimbursed such reasonable charges as he or they may have been put unto, in maintaining and removing such person, by the overseers of the poor of the city or town to which such person is or shall be removed, the said charges having been first ascertained and allowed by two or more of the justices of the peace of the city or of the county in which such town from which such removal shall be made shall be, which said charges so ascertained and allowed, shall in case of refusal of payment be levied by distress and sale of the goods and chattels of the overseers of the poor, of the city or town to which such certificated person shall be removed as aforesaid, by warrant under the hands and seals of any two justices of the peace of the city or county where the overseers of the poor shall reside, who are hereby authorised and required to issue the same, directed to some constable of such city or town, returning the overplus, if any there be, after deducting all lawful costs and charges of such sale.

Sick or lame paupers not able to be removed, to be supported by the town in which they are settled on notice given, &c.
K. & R. v. 1.
566 § 16.
43 El. c. 2.
7 John. Rep.
§ 24

XVI. *And be it further enacted*, That if any poor person shall remove, or come out of any city or town, where he is or shall be legally settled, into any other city or town within this state, and shall be taken sick or lame, so that such person cannot be conveniently removed back to the place of his last legal settlement, then the overseers of the poor of such city or town, into which such poor person shall come as aforesaid, or one of them, shall give notice in writing to the overseers of the poor of the city or town, out of which such poor person shall have come as aforesaid, of the name, condition and circumstances of such poor person, and request such overseers of the poor, or one of them, to take care of, relieve and maintain such sick or lame person, during his illness, and also to provide for his funeral if he should die there; and if any such overseer of the poor, having notice as aforesaid, shall neglect or refuse so to do, then it shall be lawful for any two justices of the peace, of the city or of the county in which such town shall be, where such poor person had his last legal place of settlement, upon complaint made to them, to cause all such sums of money as shall be necessarily expended in the maintenance of such poor person in his sickness or lameness, or on his funeral, to be levied by distress and sale of the goods and chattels of the said overseer of the poor, so neglecting or refusing to take care of and provide for such poor person, as aforesaid, after such notice given to him or them, as aforesaid, by warrant under the hands and seals of such justices, who are hereby authorised and required to issue the same, directed to some constable

How collected

ble of the city or town where such overseer of the poor shall reside, returning the overplus, if any there be, after deducting all lawful costs and charges of such sale, as aforesaid; and such sums of money so recovered, shall be paid to the overseers of the poor, or to one of them, of such city or town where such poor person shall be sick, lame, or die, as aforesaid.

XVII. *And be it further enacted*, That every person who shall think himself aggrieved by any judgment or order of any justice or justices of the peace, or by warrant of removal of any poor person, may appeal to the next general sessions of the peace, to be holden in and for such city, or in and for the county in which such city or town shall be, where such judgment or order shall be made, or from which such person shall be removed as aforesaid, who are hereby authorised and required to hear and determine such appeals, and to do justice therein according to the merits of the respective cases: *And further*, That no justice of the peace, who shall reside in any city or town where any dispute shall happen, except in the city and county of New-York, shall sit in court upon such appeal.

Appeal to the sessions, in what cases given.
K.&R. v. 1. 566. § 17.
13 & 14 Car. 2. c. 12. § 2.
8 & 9 W. 3. c. 30.
§ Geo 2.c.19.

What justices excluded from presiding in the sessions.

XVIII. *And be it further enacted*, That on every appeal to be made to the court of general sessions of the peace to be holden in and for the city and county of New-York, the justices who shall determine such appeal, shall, upon request, state the case specially and at large, that every person who shall think himself aggrieved by the determination on such appeal may have remedy thereupon in the supreme court.

The sessions of New-York may state a case, &c.
K.&R. v. 1. 566. § 18.

XIX. *And be it further enacted*, That no appeal from any judgment or order whatsoever of any justice or justices of the peace, or from any order of removal of any poor person whatsoever, from one city or town to another, shall be proceeded upon in any court of general sessions of the peace, unless reasonable notice in writing be given by the overseers of the poor of the city or town, or the person who shall make such appeal unto the overseers of the poor, or one of them, of such city or town as shall be affected by such judgment or order, or from which such poor person shall be removed, the reasonableness of which notice to be determined by the justices of such general sessions of the peace to which the appeal is made; and if it shall appear to them that reasonable notice was not given, then they shall adjourn such appeal to the next general sessions of the peace, and then and there finally hear and determine the same.

Appeals when and how to be made.
K.&R. v. 1. 566. § 19.
9 Geo. 1. c. 7. § 8.
§ Geo 2.c.19.

XX. *And be it further enacted*, That if the justices shall at their general sessions of the peace, to be holden in and for any city or county within this state, upon any appeal before them concerning the settlement of any poor person, determine in favor of the appellant, that such poor person was unduly removed, then the said justices shall, at the same general sessions, award to such appellant so much money, besides his costs and charges, as shall appear to the said justices to have been reasonably paid and expended by the overseers of the poor, of the city or town on whose behalf such appeal was made, for or towards the relief of such poor person, between the time of such undue removal, and the determination of such appeal: *And further*, That upon ev-

Prevailing party on appeal, entitled to costs, &c. against the other.
K.&R. v. 1. 566. § 20.
8 & 9 W. 3. c. 30.
9 Geo. 1. c. 7. § 7.

ry appeal upon any judgment or order of any justice or justices concerning the settlement of any poor person, or upon any proof of notice of any such appeal to have been given by the overseers of the poor of one city or town, or by any other person, to the overseers of the poor of any other city or town, or to any other person, though such person did not afterwards prosecute such appeal, the justices at the same general sessions of the peace shall award to the party in whose favor such appeal shall be determined, or to whom such notice did appear to have been given as aforesaid, such costs and charges as by the said justices in their discretion shall be thought reasonable, to be paid by the overseers of the poor of the city or town, or other person against whom such appeal shall be determined, or who gave notice of such appeal as aforesaid, and did not prosecute the same: *And*

How collected

further, If in any of the cases aforesaid, the person ordered to pay such monies, and costs, and charges, shall reside in any city or county, out of the jurisdiction of such court of general sessions of the peace, it shall be lawful for the overseers of the poor, to whom such monies were directed to be paid, to sue for and recover the same of the person against whom such award was made, with costs of suit, in an action for monies had and received to the plaintiff's use, in any court in this state having cognizance thereof, in which action a true copy of the award of such justices in their court of general sessions of the peace, signed by the clerk, and sealed with the seal of the same court, when produced, shall be sufficient evidence for the recovery of such monies so awarded.

Father, etc. of
a pauper
bound to sup-
port him.
K. & R. v. I.
860. § 21.
43 El. c. 2. § 7.

XXI. *And be it further enacted*, That the father and grand father, mother and grand mother, being of sufficient ability, of any poor, blind, lame, or decrepit person whomsoever, not being able to maintain himself, and becoming chargeable to any city or town within this state, and the children and grand children, being of sufficient ability, of every poor, old, blind, lame, or impotent person, not being able to maintain himself, and becoming chargeable as aforesaid, shall respectively, at their own charge and expence, relieve and maintain every such poor person, in such manner as the justices of the peace of the city or county where such sufficient person shall dwell, at their general sessions of the peace, shall order and direct, on pain of forfeiting and paying one dollar and twenty-five cents for each person so ordered to be relieved, for every week such order shall not be obeyed, to be sued for and recovered with costs of suit, by the overseers of the poor of the city or town to which such poor person shall be chargeable, for the use of the poor of such city or town, in the manner herein before directed, with respect to costs and charges, upon an appeal.

Penalty.
43 El. c. 2. § 2,
11.

If father, mo-
ther or hus-
band, run
away, his es-
tate liable to
seizure for
maintenance
of his chil-
ren
etc.

XXII. *And be it further enacted*, That it shall be lawful for the overseers of the poor of any city or town within this state, where any father or husband shall run away, or absent himself from his wife or children, or where any widow shall run away, or absent herself from her child or children, and leave any of them a charge to such city or town, to apply to any two justices of the peace, of the city or county where any estate real or per-

sonal, of any such father, husband or widow, or any part thereof may be, and by warrant, under the hands and seals of the said two justices, who are hereby authorised and required to issue the same, to take and seize the goods and chattels, and to let out and receive the annual rents and profits of the lands and tenements of such father, husband or mother, so absconding as aforesaid, for and towards the maintaining, bringing up, and providing for such wife, child or children, so left as aforesaid; and as soon as the said seizure shall be allowed of and confirmed by the justices in their general sessions of the peace, it shall be lawful for the said overseers of the poor, or any two of them, as often as the case may require, to sell and dispose of so much of the said goods and chattels, at public vendue, to the highest bidder, and to receive the said rents and profits, or so much thereof, as shall be ordered by the said sessions, and to apply the money arising therefrom towards the maintenance of such poor family, or person, so left as aforesaid: *And further*, That the said overseers of the poor shall be accountable to the justices of the peace, in their said general sessions, for all such monies as shall arise from any such sale, and from the rents and profits of such lands and tenements.

K. & R. v. 1.
566. § 22.
8 Geo. 1. c. 5.
§ 1. 2.
17 Geo. 2. c. 3.

Overseers of
the poor ac-
countable for
proceeds, &c.

XXIII. *And be it further enacted*, That the majority of the freeholders and inhabitants, who shall be assembled at the annual town meetings in each town in this state, shall determine and agree upon such sum of money as they may think proper, for the purpose of maintaining the poor in such town in the ensuing year, of which each town clerk shall make full and proper entries in the town book, by him to be kept, and shall, as soon as conveniently may be, deliver a true copy of such entry, certified under his hand, to the supervisor of said town, and the said supervisor is hereby required to lay the same before the supervisors of the county at their then next meeting, in order that the said sum may be raised in such town for the support and maintenance of the poor thereof.

Each town to
determine the
amount of the
monies to be
raised for sup-
port of its
poor.
K. & R. v. 1.
566. § 23.

XXIV. *And be it further enacted*, That it shall be lawful for the mayor, aldermen and commonalty, of the cities of Albany and Hudson, respectively, in common council convened, yearly to determine and agree upon such sum of money as they may respectively think proper, for the purpose of maintaining and supporting the poor in the said cities respectively, in the ensuing year, of which sums the town clerk shall make a like entry as aforesaid, in the minutes of the said common council, and deliver a certified copy as aforesaid, to the supervisor of such city, who is hereby required to lay the same before the supervisors of the county at their next meeting, for the purpose aforesaid.

The common
councils of
Albany and
Hudson to de-
termine in
like manner.
K. & R. v. 1.
566. § 24.

XXV. *And be it further enacted*, That when any poor person, belonging to any city or town within this state, shall apply for relief to any overseer of the poor of such city or town, the said overseer of the poor shall make application to a justice of the peace of such city, or of the county in which such town shall be, which said justice and overseer of the poor shall enquire into the state and circumstances of the person so applying, as aforesaid; and if it shall appear to the said justice and overseer of the poor, 99.

Justices in
each town to
relieve poor
persons
chargeable
thereto by or-
ders on the
overseer.
K. & R. v. 1.
566. § 25.
43 El. c. 2.
7 John. Rep.

8 John. Rep.
148. 323.

that such person is in such indigent circumstances as to require relief, then the said justice shall give an order in writing to the said overseer of the poor, to make such allowance weekly, or otherwise, to every such poor person as they in their discretion shall think the necessities of such poor person shall require; and the overseers of the poor shall make no other or further allowance to such poor person than what by the said order shall be directed, which said order shall be a sufficient voucher for the payment of so much money by the said overseers of the poor, and shall be allowed in adjusting their accounts. And if any poor person not belonging to, or not having gained a settlement in any city or town within this state, shall apply for relief, as aforesaid, the said overseer shall proceed in like manner as is above directed; and if the overseer and the said justice, to whom application shall have been made, as aforesaid, shall find that such poor person is not able to maintain himself, and that he is so sick, or otherwise debilitated, that it would be improper immediately to remove him, or when it shall be found impossible to make any order of removal, the said justice shall give an order in writing to the said overseer for the support of such poor person, in like manner as if such poor person belonged to such city or town, which said order shall be a sufficient voucher for the payment of so much money by the said overseer of the poor, and shall be allowed in the adjustment of his accounts; and it shall be the duty of the overseers of the poor in the several cities and towns within this state, to keep the accounts of money expended, as above directed, separate and distinct from other expenditures; and said accounts, adjusted and allowed as aforesaid, shall be considered, and hereby is declared to be a public and necessary county charge, and shall be levied, collected and paid, as other county charges are.

And in like manner for paupers not chargeable in case of sickness, etc.

W. v. S. 471.

§ 1.

8 John. Rep.

323.

The overseers to keep regular accounts of expenditures, etc.

W. v. S. 471.

§ 1.

Lunatics may be sent to the New York hospital by any city or town.

W. v. S. 471.

§ 3.

XXVI. *And be it further enacted*, That it shall and may be lawful for the overseers of the poor of any city or town, by and with the consent of the common council of such city, or of two justices of the peace of the county in which such town shall be, whenever any poor person, legally settled in such city or town, and maintained at the public charge, who were or shall become lunatic, or insane, to contract with the governors of the New-York hospital, in the city of New-York, for the maintenance and care of such lunatic, on such terms as they may deem meet, and to transport such lunatic to the said hospital; and all such sums, so agreed on for the maintenance of such lunatic, shall be regularly paid to the governors of the said hospital by the overseers of the poor of such city or town, and their successors in office; and it shall be the duty of the overseers of the poor of such city or town, to enter in the poor books, kept by them, the name of such lunatic, the weekly or other sum or sums agreed to be paid to the governors of the said hospital for his or her support, and the costs and charges of his or her removal to and from the said hospital: *Provided always*, That the settlement of such lunatic, so removed to the said hospital, shall remain the same as before his or her removal, and that it shall not be lawful for the overseers of the poor of any such city or town, to remove to the said hospital idiots or other poor persons who are not lunatic or insane.

Engraving.

XXVII. *And be it further enacted,* That the overseers of the poor of the several towns within this state, are hereby authorized and directed to loan out, on lawful interest, the money that now hath or hereafter shall come into their hands, as overseers of the poor, over and above the sum which the overseers, supervisor and town clerk, for the time being, or a majority of them, shall deem necessary for the support of the poor of such town, during the time such overseers shall continue in office, to any person or persons who are inhabitants of the said town, as may apply for and offer good and sufficient security for the payment of the same, which security shall be approved of by the said supervisor and town clerk; and the obligations so taken for securing the payment of the said money loaned, shall be drawn payable to them or their successors in office, and at the time or on the day next succeeding the day on which their then office of overseers of the poor will expire; and on settling their accounts with the persons who are by law appointed to audit the same, the said obligations so taken, and then remaining unpaid, shall be audited and allowed as so much money in their hands, to be paid over to their successors in office, and by them delivered over to their said successors accordingly; and the said overseers of the poor who shall so receive the said obligations, and their successors in office shall have full power and authority by law to sue for and recover the monies so secured by said obligations, and all other obligations heretofore taken by the overseers of the poor, with the interest then due on the same, in any court having cognizance thereof, to the amount of the sum due thereon in their own names, and that without any assignment or order, or power of attorney thereon, any law, usage or custom to the contrary notwithstanding; or if the said then overseers of the poor, with the approbation of the supervisor or town clerk, shall think it safe and expedient, they may re-loan the said money, due on such obligations together with the interest, to the borrower, and take a new obligation for the amount, payable with the interest as is before directed.

Overseers of the poor may loan out the poor funds on interest.
W. v. S. 269.

XXVIII. *And be it further enacted,* That the overseers of the poor of each city or town within this state, shall procure, at the public charge, a book wherein the names of all poor persons, applying for relief and being ordered to be relieved as aforesaid, shall be registered, with the day and year when they were first admitted to have relief, the weekly or other sum or sums of money allowed by the order for their relief, and the cause of such necessity; and that no person shall be entered in the poor books, or receive relief from the overseers of the poor, or any of them, without such order; and in case any overseer of the poor shall enter in the poor books and relieve any poor person without such order, he shall forfeit and loose all such money and goods paid and distributed to such poor person, nor shall any allowance be made to him for the same in passing his account; and the said overseers of the poor are hereby directed and required to enter in the said poor books all monies received, laid out and disbursed by them for the use of the poor, and also all matters which shall be transacted by them relating to their said office; and the

The overseers to enter in a book the names of all poor persons relieved.
K. & L. v. 1.
275. § 26.
3 W. 3. c. 11.
§ 12.

And enter in like manner all monies received, paid out, &c.

And in Albany & Hudson present such accounts to the common council.

And in the several towns they shall be laid before the clerk and supervisor who shall report the same at the town-meetings.
43 EL c. 2.
17 Geo. 2. c. 38.

Poor houses may be built in Albany, Hudson or in any town.

K. and R. v. l. 566. § 27.
43 EL c. 2.
9 Geo. 1. c. 7.

And to set the poor to work.
43 EL c. 2.

Appoint keepers, &c.

Refractory poor to be excluded, &c.

Two or more towns may join in establishing poor houses, &c.

overseers of the poor for the cities of Albany and Hudson, shall yearly lay such books of account before the Common Council of the said cities respectively, at such times as the said respective Common Councils shall direct; and the overseers of the poor of every town shall yearly, on the last Tuesday next preceeding the annual town-meeting in such town, lay their said books of account before the town clerk and supervisor of such town, and such justice or justices of the peace as may reside in such town, or the major part of them, for their examination, who shall examine and audit the same, and make report thereof to the freeholders and inhabitants of their respective towns, at their next annual town-meeting, that such further provision for the maintenance and support of the poor may be made as may be found necessary.

XXIX. *And be it further enacted*, That it shall be lawful for the overseers of the poor of the cities of Albany and Hudson, by and with the consent of the common council of the same cities respectively, and for the overseers of the poor of any town within this state, and any two or more justices of the peace of the county in which such town shall be, with the consent of the major part of the freeholders and inhabitants of such town, to be signified at such annual town-meeting, and at the proper charge of such city or town, to be ascertained, assessed and levied as aforesaid, to build, purchase or hire some fit and convenient dwelling-house or houses in such city or town, for the lodging and accommodation of the poor thereof, and also to purchase necessary materials for setting such poor persons to work, and there to maintain and employ every such poor person, and to take the benefit of the labor and services of any such poor person for the better maintenance and relief of such poor persons who shall be there kept and maintained, and to appoint such keepers thereof, from time to time, as they shall think proper; and in case any poor person, claiming relief of any city or town within this state, where such house or houses shall be so built, purchased or hired, shall refuse to be lodged, kept to work and maintained therein, such poor person shall be put out of the book in which the names of the poor are by this act directed to be registered, and shall not be entitled to receive any relief from the overseers of the poor of any such city or town: *And further*, That where any town may be too small to build, purchase or hire such house or houses, it shall be lawful for the overseers of the poor and justices of the peace, with the consent of the major part of the freeholders and inhabitants of two or more towns within any county in this state, to be signified at their annual town-meetings, to unite in building, purchasing or hiring such house or houses, for the keeping and maintaining of the poor of such towns, and also to purchase necessary materials for setting such poor persons to work, and there to maintain and employ every such poor person, and to take the benefit of the labor and services of such poor persons for the better maintenance and relief of the poor therein, and to appoint such keepers thereof, from time to time, as they shall think proper; and in case any poor person, claiming relief of any of the towns so uniting, shall refuse to be lodged, kept to work and maintained as aforesaid, such poor person shall be put out of the book in which

the names of the poor are, by this act, directed to be registered, and shall not be entitled to receive any relief from the overseers of the poor of any such town: *And further*, That it shall be lawful for the overseers of the poor and justices of any town within this state, with the consent of the major part of the freeholders and inhabitants of such town where such house or houses shall be built, purchased or hired for the purposes aforesaid, to be signified at such annual town-meeting, to contract with the overseers of the poor and justices of any other town for the lodging, maintaining and employing of any poor person belonging to such other town as to them shall seem meet; and in case any such poor person, belonging to any other town, shall refuse to be lodged, maintained and employed in any house so contracted for as aforesaid, such poor person shall be put out of the book in which the names of the poor are, by this act, directed to be registered as aforesaid, and shall not be entitled to ask or receive any relief from the overseers of the poor of any such town.

The poor of any town may be supported in such poor house.

And if refractory excluded from relief.

XXX. *And be it further enacted*, That the overseers of the poor of each city and town in this state, shall annually, within fifteen days after the termination of their respective offices, exhibit to the succeeding overseers of the poor of such city or town, a just and true account of all the monies by them respectively received and expended for the use of the poor, and in what manner, together with an account of the earnings of the poor persons by them employed; which accounts the said overseers of the poor, together with the supervisor of such city or town, and justices of the peace residing in such city or town, or the major part of them, shall, as soon as conveniently may be, examine and audit; and the said overseers of the poor, so going out of office, shall respectively on auditing such account, pay all the balance which shall appear to be in their hands, to their successors in office; and the overseers of the poor, so going out of office, shall, at the time of exhibiting their accounts, deliver to their successors in office, all books of accounts, registers and other papers relating to the poor, as aforesaid; and if any overseer of the poor shall refuse or neglect to exhibit such account, and to pay to his successors in office such monies as shall remain in his hands as aforesaid, or to deliver up all such books of accounts, registers and other papers as aforesaid, he shall forfeit and pay the sum of two hundred and fifty dollars over and above the said balance remaining in his hands, to be recovered with costs of suit, in any court of record within this state, by the overseers of the poor of such city or town, and when recovered to be applied to the use of the poor of such city or town; and if, upon auditing such account, there shall appear to be a balance due to such overseers of the poor so going out of office, or to either of them, the same shall be paid to him or them by their successors in office, out of the first monies which shall come into their hands, as overseers of the poor of such city or town.

Overseers of the poor to account annually, and how and to whom. K. & R. v. 1. 565 § 28. 43 El. c. 2. 17 Geo. 2. c. 38

Penalty.

XXXI. *And be it further enacted*, That it shall be lawful for the overseers of the poor of each city and town, to recover against their predecessors in office, and each of them, their executors or administrators, all such sums of money as shall appear upon such

Overseers of the poor may sue for and recover from their predecessors

and any monies remaining in their hands.
K. & R. v. 1.
366, § 29.

and it as aforesaid, to be due from them respectively, to such city or town, in an action for money had and received to the use of such city or town, with costs of suit, in any court having cognizance thereof, or to have actions of account against any former overseer of the poor of such city or town, his executors or administrators, and no such action shall be abated or discontinued by the death or expiration of the office of any such plaintiffs, but shall be continued and prosecuted to effect by the survivor or survivors of them and their successors in office, and such suit shall always be brought by and prosecuted in the name of the overseers of the poor of such city or town for the time being.

Poor supported by a county or by more than one town to continue as to be supported.
K. & R. v. 1.
366, § 41.

Slaves may be removed to the settlement of their masters or to the place from whence they last came.
2 Col. Rep. 106
9 John. Rep. 334

XXXII. *And be it further enacted*, That in all cases where any of the present poor in any county of this state, are maintained by the whole county or by more than one town, such poor persons shall continue to be so maintained.

XXXIII. *And be it further enacted*, That it shall be lawful to remove any slave who shall have left his master, or shall have wandered from town to town to the place of the settlement of his master, in the manner directed by the seventh section of this act, if such place of settlement can be found in this state, and if none such can be found, then to the place from whence such slave shall have last come, in the manner directed by the said section.

CHAP. LXXIV.—(R.L.)

An ACT concerning the commissioners of the Land Office, and the sale of the unappropriated Lands.

Passed April 6, 1813,

[Gr. v. 1. 280.—J. & V. v. 1. 328.—K. & R. v. 1. 297.—W. v. 3. 401.—Ibid v. 4. 250.—Ibid v. 5. 233.]

Commissioners of the land office.
K. & R. v. 1.
307.

W. v. 3. 401.
Sess. 26. c. 54,
§ 9.

W. v. 4. 250.
Sess. 28. c. 96.
§ 4.

Their powers.
[Patents granted by mistake must first be set aside regularly before a second can be granted for same land.
10 John. Rep. 23.]

Three, a quorum.
If Governor absent, to appoint a chairman.

Deputy Secretary of state to be clerk

I. *BE* enacted by the People of the State of New-York, represented in Senate and Assembly, That the person administering the government of this state, the Lieutenant-Governor, the Speaker of the Assembly, the Secretary of the State, the Attorney-General, the Surveyor-General, the Comptroller and the Treasurer of this state, shall ex-officio be and continue commissioners of the Land Office, to direct the granting of the unappropriated lands within this state, according to such powers and directions as shall from time to time be prescribed by law, and all powers now or at any time hereafter to be vested in the said commissioners, may lawfully be executed by any three of them, of whom the surveyor-general of the state shall always be one; and that it shall be the duty of the secretary of this state to convene the said commissioners when and as often as may be necessary, and in case of the absence of the person administering the government of this state at any meeting of the said commissioners, they shall appoint a chairman to preside at such meeting.

II. *And be it further enacted*, That the deputy-secretary of this state shall be clerk to the commissioners of the land-office, and that it shall be the duty of the said clerk to enter the minutes

of their proceedings as heretofore has been customary, and to keep the same in the secretary's office in proper order, with the papers and documents which may be presented to the said board.

III. *And be it further enacted*, That the said clerk shall be allowed the sum of two hundred and fifty dollars per annum, to be paid quarter yearly, and the comptroller is hereby required to issue his warrant on the treasurer for the same, as it shall become due.

IV. *And be it further enacted*, That it shall be lawful for the said commissioners to grant so much of the lands under the waters of navigable rivers as they shall deem necessary to promote the commerce of this state: *Provided always*, That no such grant shall be made to any person whatever, other than the proprietor or proprietors of the adjacent lands: *And provided also*, That every applicant for such grant shall previous to his or her application, give notice thereof by advertisement to be published in one of the newspapers printed in this state for six weeks successively, and shall cause a copy of such advertisement to be put up at the court-house of the county in which the lands lay, so intended to be applied for, and if there be no court-house in the county, then at such place as the said commissioners shall direct; and the powers hereby vested in the said commissioners shall extend under the powers and limitations prescribed by this act to land under the water of Hudson's river adjacent to the state of New-Jersey, and also to land under the waters adjacent to, and surrounding Great Barn Island, in the city and county of New-York, and to the land between high and low water mark on said island: *Provided*, That no grant to be made in pursuance of the provision last mentioned, shall infringe the rights of the mayor, aldermen and commonalty of the city of New-York: *And provided further*, That the navigation of the waters surrounding the said island shall not be affected thereby.

V. *And be it further enacted*, That all letters patent hereafter to be granted, shall be in such form as the said commissioners shall direct, and shall contain an exception and reservation to the people of this state of all gold and silver mines.

VI. *And be it further enacted*, That it shall be lawful for the commissioners of the land office in all cases in which legal claims exist against this state for lands granted under the authority thereof, to any person whatever, the title to which was at the time of granting the same, out of this state, to cause the value of such land at the time when the title thereof shall have been discovered to be out of the people of this state, to be ascertained in such manner as the said commissioners shall deem proper, and to compensate the claimant or claimants to the amount of such value, by purchases which he or they shall make at any of the sales at auction which the surveyor-general shall make, of any of the unappropriated lands of this state; or in case the claimant or claimants shall so elect the whole or any part of such compensation, shall be receivable in payment for lands by him or them heretofore purchased of the state: *Provided always*, That nothing in the section contained shall be construed to ex-

W. v. 4. 249.
Sess. 23. c. 96.
§ 1.
His duty.

Compensation
to the clerk
W. v. 4. 250
Sess. 23. ch. 96
§ 2.

Commission-
ers to grant
lands under
water.
K. & R. v. 1.
209 § 11.
Proviso,
To be granted
only to the
proprietor of
land adjacent.
Further pro-
viso, requiring
notice of ap-
plication to be
published.
For what time
and in what
manner.
W. v. 5. 233
Sess. 30. ch. 176
Power to
grant land un-
der water ad-
jacent to the
state of New-
Jersey and
Great Barn
Island.
Sess. 32. ch. 98
W. v. 5. 473
Proviso—not
to prejudice
the rights of
the corpora-
tion of New-
York, &c.

Letters patent
to exempt gold
and silver
mines.
K. & R. v. 1. 297
§ 13.

Commission-
ers to give
equivalents
for lands
granted by
patent, to
which the
state had no
title.
Sess. 34. ch. 48
§ 2.

Proviso.

tend to any lands deemed to have been forfeited to the people of this state by the attainder or conviction of any person whatsoever which have been or may be sold under the authority of this state.

Comptroller, attorney, and surveyor-general, or any two of them, with the consent of the governor, to extinguish claims against the state for defect of title, and to draw on the treasury for the compensation allowed.

R. & R. v. 1. 397 section 15.
W. v. S. 50, 51
Session 25. ch. 21.
Proviso

VII. *And be it further enacted*, That it shall be lawful for the comptroller, the attorney-general and the surveyor-general of this state, or any two of them, by and with the consent and approbation of the person administering the government, from time to time to extinguish all legal claims upon lands that have been sold under the authority of this state, or which exist in consequence of a defect of title in the state to any lands granted under the authority of the same; and that it shall be lawful for the comptroller to draw his warrants on the treasurer for the sum or sums that shall or may be agreed to be paid for the extinguishment of such claims to be paid out of any unappropriated monies in the treasury: *Provided however*, That the sums of money to be paid in satisfaction and extinguishment of any such claim, shall in no case exceed the principal monies paid for the purchase of any tract of land, and an interest thereon of six per cent. per annum.

Eastern boundary of the state settled according to Ellicot's survey.
R. & R. v. 1. 397. § 17.

VIII. *And be it further enacted*, That the map and description of the line run by Benjamin Ellicot, as for the eastern boundary line of the lands ceded by this state to the commonwealth of Massachusetts, by the deed of mutual cession, executed on the sixteenth day of December, one thousand seven hundred and eighty-six, with the certificate of the surveyor-general of this state, endorsed thereon, and heretofore delivered by him to the secretary of this state, to be deposited among the archives of this state, shall there remain as a public record; and the line indicated on such map, and in such description, shall forever hereafter be taken and deemed to be the eastern boundary line of the lands aforesaid.

Deficiency of lands for Canadian and Nova Scotia refugees how ascertained. § 1.
U. v. S. 454
Sess. 20. ch. 60. § 1, 2

IX. *And be it further enacted*, That the commissioners of the land office shall cause the deficiency in the quantity of the land intended to be granted to the Canadian and Nova Scotia refugees, to be ascertained at the expense of the claimants, and shall cause the surveyor-general to lay out such deficiency upon the tract immediately west of the land already granted to them, and heretofore set apart for that purpose: *And further*, That the said commissioners shall cause letters patent to be issued to the respective claimants, or their legal representatives, for the proportion of such deficiency, to which they may be respectively entitled, upon their paying the patent fees, and their respective proportions of the expense of survey.

Commissioners to grant letters patent therefor.

What lands to be considered as unappropriated under this act.
W. v. S. 505.
Sess. 27. ch. 211. § 3.
Sess. 33 ch. 241 § 2

X. *And be it further enacted*, That the lands belonging to the people of this state at *Point Au Fer*, in the county of Clinton, all the lands in the military tract, commonly called the hundred acre lots, all the lots in said tract which have been allotted for and have not yet been patented, and to which the persons for whom they were intended, shall not appear to be entitled by any law of this state, all the reserved lots, other than those appropriated for the use of the gospel, schools, and literature, and all the unpatented lands lying between the Chenango and Owego rivers, in the said tract, shall be considered as unap-

propriated lands, and, as such, be subject to be disposed of according to the directions of this act.

XI. *And be it further enacted*, That it shall be lawful for the said commissioners, (and they are hereby required) from time to time, and as often as they shall judge it to be for the interest of the state, to direct the surveyor-general to cause actual surveys to be made of such parts of the unappropriated lands of this state, into lots of such number of acres as they shall judge proper, for the purpose hereafter mentioned: *Provided always*, That no lot shall exceed in quantity two hundred acres, unless local circumstances and situation shall, in the opinion of the surveyor-general, render it proper to lay out certain lots of larger or smaller size than two hundred acres; and in that case, it shall be lawful for him so to lay out such lots: *And further*, That it shall be lawful for him, in the same manner, to sell all lots heretofore so laid out by him, any law to the contrary notwithstanding.

XII. *And be it further enacted*, That it shall be lawful for the said commissioners, from time to time, to direct the surveyor-general to sell the unappropriated lands belonging to this state, and not otherwise directed to be disposed of, at public vendue, in such parcels as they shall deem most for the interest of the state, and for the promotion of the settlement thereof: *Provided*, That not more than twenty thousand acres shall be sold at one vendue, and that no one parcel of such land, exceeding two hundred acres, shall be separately exposed to sale.

XIII. *And be it further enacted*, That it shall be the duty of the surveyors who shall survey any unappropriated lands, in order to a sale thereof, pursuant to this act, to appraise the value of each lot, exclusive of the improvements thereon, (in case such improvements exceed the value of sixty dollars) which appraisement they shall deliver, together with the returns of such surveys and maps of the lots so surveyed, and a field book containing an account of the soil, timber, and local advantages of each lot, to the surveyor-general, a copy whereof shall be filed in the secretary's office, for the private information of the said commissioners; and that the said commissioners shall, previous to every sale, furnish the surveyor-general with an account of the prices, below which it shall not be lawful for him to sell any of the said lots.

XIV. *And be it further enacted*, That the surveyor-general shall make, or cause to be made, a map of each of the said tracts, so to be surveyed as aforesaid, distinguishing on such maps the town and county in which such lots are situate; which maps shall be fixed up in the said surveyor-general's office, and one copy to be furnished by him, shall also be fixed up in the office of the secretary of this state, to be inspected by any person whatsoever every day, Sundays excepted, during the stated hours of doing business in the said office; and the said maps shall, after the sale of the lands described thereon, be filed in the offices of the said surveyor-general and secretary respectively.

XV. *And be it further enacted*, That the land directed to be sold as aforesaid, shall be sold by the surveyor-general to the highest bidder, at public vendue; of the time, place and condi-

Unappropriated lands to be surveyed into lots when commissioners require it.
W. v 3, 365
Sess. 28, ch. 106 § 1
W. v 3, 368
Sess. 27, ch. 111 § 5
Provido.
No lot to exceed 200 acres, unless, etc.
Surveyor-general may sell certain lots.

Commissioners may direct unappropriated lands to be sold.
Sess. 26, ch. 106 § 2
W. v 3, 368
Provido.
Not more than 20,000 acres to be sold at one vendue, and not more than 200 acres at a time.
Lots to be appraised before sale, exclusive of improvements, etc.
W. v 3, 368
Sess. 26, ch. 106 § 3, 4.
Map, field book, etc. to be filed.

And no sales to be made below the appraised value.

Surveyor-general to make a map etc. and how to be disposed of.
W. v 3, 368
Sess. 26, ch. 106 § 5

Land to be sold to the highest bidder
W. v 3, 365

Sec. 26, ch.
100 § 6
How and
what notice to
be given, &c.

Conditions of
s.c.

Proviso.

After the first
payment, pur-
chaser to re-
ceive a certifi-
cate of pur-
chase.
W. v 3, 365
Secs 26, ch.
100 § 7
And on con-
dition purcha-
ser execute a
bond for pur-
chase money.

On purcha-
ser paying the
bond, letters
patent to is-
sue.

If purchaser
refuse, penal-
ty, &c.

The value of
improvements
occupant enti-
tled to recover
of the purcha-
ser.
Secs. 23 ch.
38 § 2

How to be
ascertained.

tions of which sales, eight weeks previous notice shall be given in the newspaper published by the printer of the state, and in one other newspaper published in the city of Albany, and in one other published in the city of New-York, and all the newspapers published in the several counties where the lands to be sold are situate; and every sale so to be made, shall be on the condition, that in forty-eight hours thereafter, the one eighth part of the consideration money be paid to the surveyor-general, and the remainder in six equal payments, in each successive year thereafter, with interest, at the rate of six per cent. per annum: *Provided*, That nothing in this clause contained, shall be construed to authorise the sale of any of the said lands under the minimum price prescribed by the said commissioners, as herein before directed.

XVI. *And be it further enacted*, That within forty-eight hours after each sale, the purchaser of each tract shall pay to the surveyor-general the said one eighth part of the purchase money, and execute a penal obligation conditioned for the payment of the residue to the people of the state of New-York, in manner aforesaid; and on delivery of such obligation to the surveyor-general, and on receipt of such payment, he shall give such purchaser a certificate containing the name of the purchaser, a description of the land purchased, the sum paid, and the sum remaining due for the same; and whenever any such purchaser, or his legal representative, or assigns, shall produce such certificate to the commissioners of the land office, with a receipt or receipts of the treasurer endorsed thereon, for the whole of the purchase money due for the same, it shall be the duty of the said commissioners to cancel such obligation, and to cause letters patent to issue for the lands described in such certificate; and if any purchaser shall refuse or neglect to make such payment, and to deliver such obligation to the surveyor-general, as aforesaid, he shall, for every such refusal or neglect, forfeit the sum of fifty dollars, for each lot so by him purchased, to be recovered with costs of suit, by the surveyor-general, in an action of debt, in any court having cognizance thereof, at the expense and for the use of the people of this state.

XVII. *And be it further enacted*, That if any tract of land to be sold as aforesaid, was occupied and improved on the sixth day of April, one thousand eight hundred and three, or on the seventeenth day of February, one thousand eight hundred and nine, to the value of twenty-five dollars, the occupant of such improvement shall be entitled to recover from the purchaser the value thereof at the time of such sale, to be ascertained by appraisers, one of whom to be nominated by such occupant, another by the purchaser, and a third, in case of their disagreement, by the other two, and if either such occupant or purchaser shall, on the application of the other, refuse or neglect to make such nomination, and such neglect or refusal shall be proven to the satisfaction of the surveyor-general, the surveyor-general shall appoint appraisers to ascertain the value of such improvement for the purpose aforesaid, and the purchaser and occupant shall each pay one half of the expense of such appraisement, and the said commissioners are inhibited from causing letters patent to be issued for any such

tracts of land, until satisfactory proof be produced that the purchaser has in manner aforesaid or otherwise satisfied the occupant of such tract for his improvements thereon, according to the true intent of this act.

No letters patent to issue to purchaser till improvements are paid.

XVIII. *And be it further enacted*, That the surveyor-general shall deliver the obligations which he shall receive as aforesaid, to the comptroller, and if any one payment stipulated in any such obligation shall remain due one year after the same ought to have been made, it shall be lawful for the said commissioners either to direct the comptroller to put such obligations in suit, or the surveyor-general to sell in manner aforesaid, the land for the payment of which such obligation shall have been given: *And further*, That all previous payments made on account of the same land, shall be forfeited to the people of this state.

Obligations when to be put in suit.
W. v. 3. 367.
Sess. 26. c. 106
§ 9.

XIX. *And be it further enacted*, That in order to enable the surveyor-general to make the surveys and sales directed by this act, the commissioners of the land office shall, from time to time, certify to the comptroller the sums of money estimated for the expenses of the surveys and sales to be made as aforesaid; whereupon the comptroller shall issue his warrant on the treasurer, in favor of the surveyor-general for the monies so certified, for which he shall account with the comptroller.

Expenses of surveys and sales to be audited and paid.
W. v. 3. 367.
Sess. 26. c. 106
§ 16.

XX. *And be it further enacted*, That the said commissioners be authorised to compensate for deficiencies in any of the townships laid out and sold, of the lands purchased from the Oneida and Tuscarora Indians, in the year one thousand seven hundred and eighty-five, by grants of equal quantities of the lands of said purchase still remaining unappropriated.

Deficiencies in land purchased of the Oneida and Tuscarora Indians in 1785, to be compensated.
Sess. 33. c. 170
§ 3.

XXI. *And be it further enacted*, That whenever the surveyor-general shall have exposed to sale any lots of the unappropriated lands of this state, in pursuance of this act, and any of such lots shall remain unsold, it shall be lawful for the commissioners of the land office to grant letters patent to such persons respectively as shall thereafter first make application for any of the said lots, and paying therefor the minimum price affixed to them in pursuance of this act, in the manner herein prescribed: *Provided*, That no person shall be considered as an applicant unless he shall have made the first payment required by this act: *And provided further*, that no one applicant shall be entitled to a grant of more than two lots.

Lands not sold at vendue may be sold for the minimum price affixed to them.
W. v. 3. 365.
Sess. 27. ch. 111. § 1.

Proviso.

Further proviso.

XXII. *And be it further enacted*, That that all public sales of lands belonging to the people of this state, hereafter to be made by the surveyor-general, shall be held in the city of Albany, unless otherwise directed by the said commissioners.

All public sales to be in Albany, unless otherwise directed by the commissioners.
W. v. 3. 365.
Sess. 27. ch. 111. § 2.

XXIII. *And be it further enacted*, That every surveyor who shall be employed by the surveyor-general to survey any unappropriated lands and to appraise the value thereof, pursuant to any statute of this state, shall, before he proceeds to make such survey and appraisement, take and subscribe an oath before the chief justice, or some other justice of the supreme court, or before a commissioner appointed by the said supreme court to take affidavits to be read in the said supreme court, or before the first judge of any court of common pleas within this state, faithfully to

Surveyors employed by the surveyor-gen. to take an oath.
W. v. 1. 634.
Sess. 29. ch. 135.

Surveyors making a false return &c. shall be deemed guilty of perjury,

And atty. gen. to prosecute therefor.

Occupants in certain towns to remain unmolested in possession and to have right of pre-emption.

W. v. 4. 400.

Sess. 29. c. 71.

§ 1.

Sess. 33. c. 65.

§ 2.

Evidence of improvements to be produced.

Lands mentioned in preceding section to be surveyed

W. v. 4. 400.

§ 2.

Sess. 29. c. 71.

§ 2.

Provido.

Returns to be made to the commissioners of said lands.

W. v. 4. 400.

§ 3.

Sess. 29. c. 71.

§ 3.

The said occupants entitled to letters patent on certain terms.

W. v. 4. 400.

§ 4.

Sess. 29. c. 71.

§ 4.

execute the trust reposed in him, and shall file the said oath, certified by the person before whom the same shall be taken, in the surveyor-general's office: *And further*, That in case any such surveyor shall wilfully and knowingly make a false return of the survey by him made, or shall wilfully and knowingly return an appraisement of the lands so surveyed to the surveyor-general, variant from the true value thereof, or without having personally surveyed and explored the same, he shall be deemed guilty of wilful and corrupt perjury, and that it shall be the duty of the attorney-general to prosecute every person who shall offend in the premises.

XXIV. *And be it further enacted*, That it shall and may be lawful for Thomas Hinckley, and all other persons who now are, and for the term of eight months previous to the passage of this act, have been in possession of any of the unappropriated lands belonging to this state, in the county of Essex, and in the towns of Queensbury, Fairfield, Thurman, Johnsburgh, Chester, Bolton, Westfield and Putnam, in the county of Washington, and who have made actual improvements thereon, to the value of fifty dollars, to continue in possession thereof unmolested until after the expiration of the term herein after mentioned, giving them the pre-emptive right of the same, and none of the said lands so possessed shall in the mean time be located upon, sold or granted to any other person or persons: *And further*, That the evidence of improvements to be produced to the said commissioners by the said occupants, shall in all cases specify the nature of such improvements, so as to enable the said commissioners to determine whether they are conformable to law.

XXV. *And be it further enacted*, That it shall be the duty of the surveyor-general to cause a survey and appraisement to be made of the lands last mentioned in the manner prescribed by this act; and such survey, as far as circumstances will admit, shall be made in such manner as to include in the several lots so to be laid out, the separate improvement of each of the several occupants: *Provided*, That it shall not be necessary to make new surveys of any part of the said lands already surveyed and appraised, pursuant to the acts heretofore passed for surveying and selling the unappropriated lands.

XXVI. *And be it further enacted*, That as soon as may be after such survey the surveyor-general shall cause returns to be made to the commissioners of the land office, of the several lots laid out by virtue of this act, of the appraised value, and the name of the occupants of the same respectively.

XXVII. *And be it further enacted*, That if the said Thomas Hinckley and the other persons, occupants and possessors as aforesaid, or their heirs or devisees or either of them, shall within one year after the survey and return aforesaid, apply to the said commissioners to purchase the lots by them respectively occupied and possessed, the said commissioners shall sell and grant the same to such applicant or applicants, his or their heirs or assigns. he or they paying, or securing to be paid, for the same, the appraised value thereof, which payments shall be made and secured in the manner prescribed by this act.

XXVIII. *And be it further enacted*, That when any settler on or occupant of land belonging to the people of this state, shall, by virtue of any law, become entitled to a grant of such land, it shall be the duty of such settler or occupant to apply for the grant within twelve months after the passing of the law in his favor, unless otherwise provided by such law; and that after the expiration of the time above limited, it shall not be lawful for the said commissioners to issue such grants, and such land shall be sold in the manner directed for the sale of unappropriated lands by this act.

Occupant to apply for letters patent in 12 months after any law in his favor, or debarred therefrom.
Sess. 34. c. 49. § 12.
And in such case land to be sold as unappropriated.

XXIX. *And be it further enacted*, That any person who now is or hereafter shall be indebted to the people of this state for lands, and shall pay such debt, or any part thereof, before he is by law bound to pay the same, such person shall be allowed a deduction of one per cent. on such sum for each year which such sum shall be paid before the day appointed by law for the payment thereof.

Debtors to the state anticipating their payments entitled to one per cent. discount.
Sess. 34. c. 49. § 13.

XXX. *And be it further enacted*, That it shall and may be lawful for the attorney-general to foreclose all the mortgages remaining unenclosed, against the original purchasers of the Cayuga reservation, or their heirs, devisees or assigns, and purchase the mortgaged premises in behalf of the people of this state, in all cases where the same cannot be sold for the amount of principal and interest due thereon, and on such foreclosure, to discharge the said bonds and mortgages: *Provided*, the mortgagors or their legal representatives, pay to the attorney-general all costs arising from such foreclosure: *And provided*, That if any person or persons shall, at such sale, bid the amount of the sum due to the state, for any of the lots so directed to be sold as aforesaid, and shall pay one eighth of the consideration money into the treasury of this state, and execute his or their bond and mortgage on the premises, for the residue, payable in six annual instalments with interest, at the rate of six per cent per annum, then and in that case, it shall be lawful for the said commissioners to grant to such person or persons, or their legal representatives, all the right, title and interest of the people of this state to the said lot or lots, purchased as aforesaid: *And provided also*, That if any or either of the said lot or lots shall be disposed of as aforesaid, the purchaser or purchasers thereof shall pay to the occupant or occupants of said lot or lots, the value of the improvements made by them thereon, agreeably to the provisions contained in the thirteenth section of this act, unless such purchaser or purchasers shall be the mortgagor or mortgagors, or the legal representatives of such mortgagor or mortgagors of said lot or lots so purchased as aforesaid: *And provided also*, That nothing in this act contained shall be construed to prevent or bar any mortgagor, or his or her legal representative or representatives, from the right of redeeming any lands included in any of the said mortgages, at any time previous to such sale, upon paying the principal, interest and cost, if any, due on such mortgage.

Mortgages of land in Cayuga reservation to be foreclosed.
Sess. 33. c. 105 § 1, 2.

Proviso.

Further proviso.

Further proviso.

Further proviso.

XXXI. *And be it further enacted*, That the present occupants of the lots in the late Cayuga reservation which have heretofore reverted, or shall hereafter revert to the state, shall be en-

Occupants in the late Cayuga reservation entitled to pre-

emption and
terms thereof.
Sess. 35. ch. 7.
§ 1
Sess. 33. ch.
105. § 2
Sess. 34. ch.
48. § 1
Envoise

Further pro-
viso

Further provi-
so

Session 34. ch.
48 § 1

Commission-
ers may sell
lots in Oswego
village
Sess. 33. ch.
141. § 4

Part of the
village of Os-
wego declared
a public high-
way.
Session 34. ch.
246. § 25

Lots in the
vicinity of
Black Rock
to be sold
Session 29. ch.
110. § 1

The vacant
lands lying
along the
Niagara river,
and in lot No
1, in Hannibal
to be leased
Session 29. ch.
110. § 3

Certain land
near Black
Rock not to
be sold
Session 29. ch.
110. § 3

titled to the pre-emption right to the land which they respective-ly possess, at such price as shall appear by appraisement to be made under the directions of the commissioners of the land office to be the fair value of the land, exclusive of improvements: *Provided*, That they shall respectively within six months after an appraisement shall have been filed in the office of the secretary of this state, pay to the treasurer one eighth of the appraised value thereof, with interest thereon, from the time of filing the same, and the expenses which have accrued on the foreclosure of the original mortgages, and execute a bond and mortgage for the residue of the said appraised value, payable in six equal annual payments, with interest, at the rate of six per cent. per annum: *And provided further*, That in cases in which the occupant or occupants shall hold as tenant or tenants, or in any other way by contract, for the benefit of some other person, that the landlord or him for whose benefit he or they shall hold, shall be considered the person entitled to the benefit of this act: *And provided further*, That unless the said occupants shall comply with the terms aforesaid, within the times above limited, they shall forfeit all claims to be compensated for their improvements on the sale of the said lots respectively, and all such lots shall thereafter be sold in the manner directed by this act for the sale of unappropriated lands.

XXXII. *And be it further enacted*, That the commissioners of the land office shall, from time to time, direct so many of the lots in the village of Oswego as they shall deem most advantageous to the state, to be sold in manner directed for the sale of unappropriated lands by this act.

XXXIII. *And be it further enacted*, That so much of the land belonging to the people of this state, in the village of Oswego as is south of the south line of village lot number six, and which extends into the slip at the east end of Taurus-street, be, and the same is hereby declared to be a public highway.

XXXIV. *And be it further enacted*, That the said commissioners shall direct so many of the lots in the vicinity of Black Rock, on the Niagara river, laid down on the plan reported by the surveyor-general, and in such parcels as they shall deem most advantageous to the state, to be sold in the same manner and on the same terms as is directed for the sale of the unappropriated lands by this act.

XXXV. *And be it further enacted*, That the surveyor-general shall from time to time lease for terms not exceeding three years at a time, the vacant lands lying along the Niagara river, and belonging to this state, and in lot number one, in the township of Hannibal, not liable to be sold by this act until otherwise directed by the legislature.

XXXVI. *And be it further enacted*, That the ground bounded on the north by the hundred acres to be leased with the ferry at Black Rock, on the west by the Niagara river, and on the south-east by the northernmost street laid down on the plan reported as aforesaid, by the surveyor-general, shall not be sold till otherwise directed by the legislature.

XXXVII. *And be it further enacted*, That it shall be the duty

of the sheriff of the county of Niagara, upon application of any person or persons to whom any land shall be sold or leased in obedience to this act, or to whom any lands lying on the said Niagara river have been heretofore sold or leased by the surveyor-general or commissioners of the land office, in pursuance of an act, entitled "an act for the sale of the unappropriated lands, and for other purposes," passed the sixth day of April, one thousand eight hundred and three, to put such purchaser or purchasers, lessee or lessees into the quiet and peaceable possession of the lands by them respectively purchased or leased from the state, and to remove all persons trespassing thereon: *Provided however*, That nothing herein contained, shall impair or affect the right of the occupants of any of the said lands, to recover a compensation for their improvements pursuant to this act.

Sheriff of
Niagara to
put purcha-
sers into pos-
session.
Session 29. ch
110. § 4

Proviso

Rates of fer-
riage across
the Niagara
river, near
Black Rock
Session 29. ch
110. § 4

Lots in Lew-
iston to be
sold
W. v. 3. 370
Session 26. ch
106. § 23

Notice of sale
to be given

Public square
in Lewiston to
be divided into
lots and
sold
Session 34. ch
109
And other
land to be
located as a
public square
and cemetery

Certain land
to be sold for
a certain
highway from
Chester to
Canton
Session 34. ch
48. § 4

Session 33. ch
60
Session 31. ch
102

Attorney-gen-
eral to sue for
certain debts
due the state
Session 34. ch
48. § 5

Session 31. ch
102

Certain lands
to be sold for

XXXVIII. *And be it further enacted*, That the rates of ferriage across the Niagara river at Black Rock ferry, near the outlet of Lake Erie, shall be as follows, viz: for every waggon or carriage with four horses or oxen, one dollar and seventy-five cents; for every carriage with two horses or oxen, one dollar and fifty cents; for every sleigh or carriage with one horse, one dollar and twenty-five cents; for every man and horse, fifty cents, for every score of sheep and hogs, one dollar and fifty cents; for all led or loose horses or cattle, twenty-five cents.

XXXIX. *And be it further enacted*, That so many of the lots in the village of Lewiston, as the commissioners of the land office shall deem most advantageous to the state, shall be sold by the surveyor-general at public vendue, upon the same terms of payment as are before prescribed concerning the sale of the other unappropriated lands; and that the like notice shall be given of the said sales, in the several newspapers aforesaid, as is herein before directed relative to the other public sales; and that it shall and may be lawful for the surveyor-general to lay out the ground in the said village now occupied as a public square, into lots, and to sell and dispose of the same in such manner as he shall deem most conducive to the interests of the said village, and the people of this state; and that the surveyor-general shall locate the public square and cemetery in any other part of the said village upon lands belonging to the people of this state.

XL. *And be it further enacted*, That the surveyor-general shall sell, in the manner prescribed for the sale of unappropriated lands by this act, so much of the lands belonging to the people of this state, through or near which the road from Chester to Canton doth pass, as will be sufficient, after paying the expenses of surveying the same into lots, to discharge the balance remaining due of an appropriation for improving the said road, any former law to the contrary notwithstanding.

XLI. *And be it further enacted*, That it shall be the duty of the attorney-general to prosecute for, and recover all monies that may be due on the sales made by the surveyor-general pursuant to the act passed the first day of April, one thousand eight hundred and eight.

XLII. *And be it further enacted*, That the surveyor-general shall, in the manner prescribed by this act, sell the lands direct-

the improvement of roads
Session 34. ch
48. § 6
Session 33. ch
83. § 3

ed to be surveyed by the third section of the act, entitled "an act authorising the laying out, making and improving the roads therein mentioned," passed March twenty-third, one thousand eight hundred and ten, and that the treasurer on the warrant of the comptroller, pay out of the proceeds of such sales, the sum of twenty-five hundred dollars, in the manner and for the purposes expressed in the eighth section of the act last mentioned, any thing in the said act to the contrary notwithstanding.

Certain lands
in Bolton and
Hague to be
sold for open-
ing and im-
proving a cer-
tain road.
Session 34. ch
48. § 7
Session 33. ch
93

XLIII. *And be it further enacted,* That the surveyor-general shall in like manner sell the unappropriated lands in the towns of Bolton and Hague, and that the treasurer shall, on the warrant of the comptroller, out of the proceeds of such sales, pay to the commissioners appointed in pursuance of the act, entitled "an act to open and improve a road on the west side of Lake George," passed thirteenth March, one thousand eight hundred and ten, or to such other commissioners as may hereafter be appointed, in the manner and for the purposes expressed in the act last mentioned, the sum of two thousand five hundred dollars.

Recital

And whereas, it is represented that sundry persons have recently made application to the commissioners of the land office, for lands in the tract called the Iron Ore tract, in the county of Essex, the pre-emption to which they claim under the act for the relief of Thomas Hinckley, and others, and that they have through inattention to the nature of the proofs required by said act, brought defective documents in support of their claims, and that the time limited by law will expire before they can procure further proofs :

Therefore,

Certain claim-
ants in the
Iron ore tract
to have time
to produce
and prove
their claims.

XLIV. *Be it further enacted,* That any persons having such claims on any of the land in said tract by virtue of said act, they shall be allowed till the first day of July next, to substantiate their respective claims, any thing in the said act to the contrary notwithstanding.

Heirs of occu-
pants in cer-
tain cases en-
titled to letters
patent and on
what terms,
&c.

XLV. *And be it further enacted,* That in every case in which any person in the occupancy of lands liable to be granted by the said act, shall have died, leaving an heir or heirs under the age of twenty-one years, entitled to a grant of land, in consequence of such occupancy, it shall be lawful for the surveyor-general to give him or them a certificate, as in other cases of such right, on payment being made of the one eighth part of the consideration monies, without requiring a bond for the residue ; and whenever such certificate shall be produced to the commissioners of the land office, with the treasurer's receipt for the balance of the consideration due on said land, they shall cause letters patent to be issued for the same.

Time in the
act of April 2,
1810, extend-
ed to the 1st
September,
1813, and to
what persons,
and how.

XLVI. *And be it further enacted,* That the time limited in the third section of the "act making provision for expenses in surveying certain lands therein mentioned, and for other purposes," passed April 2nd, 1810 ; within which the persons intended to be benefited thereby should comply with the conditions required by said act, be extended to the first day of September next, and that the proprietors of lands in any patents in the eastern district, the surveys of which have been extended on to unap-

propriated lands, if such extension shall appear not to have been made with a fraudulent intent, shall be entitled to the like benefit.

XLVII. *And be it further enacted*, That it shall be lawful for the secretary of this state to purchase a stove and carpet for his private office, in the capitol, for the use of the commissioners of the land office, and that the comptroller shall draw his warrant upon the treasurer for the amount of such purchases: *Provided*, such amount shall not exceed the sum of one hundred and fifty dollars.

Secretary of state to purchase a stove and carpet

CHAP. LXXX.—(R.L.)

An ACT concerning Lands in the Military Tract.

Passed April 8, 1813.

[W. v. 3. 399.—W. v. 4. 643.—Sess. 29. ch. 187.—Sess. 34. ch. 7.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the title to all lands heretofore granted by letters patent to officers and soldiers serving in the line of this state in the army of the United States, in the late war with Great-Britain, and who died previous to the twenty-seventh day of March, one thousand seven hundred and eighty-three, shall be and hereby is declared to have been vested in the said persons at the time of their deaths respectively.

II. *And be it further enacted*, That in all cases where any person or persons shall have actually settled on any lands granted by the said letters patent, under colour of a bona fide purchase, by him or them made, and in any action to be instituted for the recovery of such lands, a judgment or decree shall pass against the defendant or tenant, the plaintiff shall not be permitted to sue out a writ of possession or seisin thereon, or in any manner to divest the said defendant or tenant of the possession of such lands, until he shall have paid the defendant, or tenant, the value of the improvements made thereon by the said defendant, or tenant, or by the person or persons under whom the said defendant, or tenant, shall hold such possession, deducting thereout a reasonable compensation for the use and occupation of the said lands, which said value of the said improvements, and compensation for the use and occupation of the lands, in case of disagreement as to the amount thereof between the parties, shall be ascertained by the appraisement of three disinterested freeholders, to be mutually chosen by the said parties, and in case the said parties cannot agree in the choice of the whole, or any number of the said appraisers, then it shall be lawful for the chancellor of this state, upon the application of either of the said parties, and satisfactory proof given to him by the applicant of such disagreement, and it is hereby made his duty, in such case, by writing, under his hand, to appoint such appraisers as shall not be agreed on by the said parties.

III. *And be it further enacted*, That the said appraisers shall

Lands granted to the officers and soldiers who died before March, 1783, declared vested in them at the time of their deaths respectively
W v 3, 399
Sess 26, ch 22,
§ 1
3Caines' Rep 62
2 John. Rep 80
Settlers on the said patented lands who bona fide became purchasers from persons having no title
W v 3, 399
Sess 26, ch 22,
§ 2
Not to be turned out of possession by ejectments till the value of their improvements are paid
3 John. Rep 512.
Deducting a reasonable sum for the use and occupation.
How ascertained and appraised

The appraisers to take an oath

W v 3, 399
Sess 26, ch 88,
§ 3

Compensation to appraisers

Limitation of time within which owners of such lands are to sue for the same
W v 3, 399
Sess 26, ch 88,
§ 4
W v 4, 643
Sess 29, ch 187 § 7
Proviso, saving the rights of times covert, &c. who must sue within 5 years after disabilities removed
Further proviso—If owner before suit brought or his said land, offer to pay for improvements, etc. and tenant refuse then plaintiff shall recover costs, otherwise recovers no costs

If any person, under colour of title, be in possession of land, escheated and shall have made improvements to the value of 25 dollars thereon
W v 3, 401
Sess 26, ch 88,
§ 6
Sess 34, ch 48,
§ 2
The land office shall direct 300 acres, including improvements to be surveyed and laid off

within thirty days after notice of their being chosen or appointed, as aforesaid, severally take and subscribe an oath before one of the justices of the peace of the county in which such lands shall be, well and faithfully to perform the trust reposed in them by this act, without favor or partiality to either of the parties; and thereupon view the said improvements, and make and subscribe an appraisement thereof, in writing, under their hands and seals, or under the hands and seals of any two of them, and deliver a copy thereof to each of the said parties, if required, and file the original in the office of the clerk of the county where the said lands shall be situated; and that each of the said appraisers shall be entitled to three dollars per day for his services, including his reasonable expences, one moiety whereof shall be paid by each of the said parties whenever the said appraisement shall be completed.

IV. *And be it further enacted*, That in all cases where any of the said lands shall be settled in manner aforesaid, the person or persons claiming any title thereto, or any part thereof, shall commence an action for the recovery thereof before the first day of January, one thousand eight hundred and twenty-three, and prosecute the same to effect without wilful delay, or be forever thereafter barred from recovering the same: *Provided always*, That if any person or persons claiming such title, be feme covert, under age, or insane, on the said first day of January, one thousand eight hundred and twenty-three, such person or persons shall be permitted to bring such action within five years after such disabilities shall be removed: *And provided also*, That if the person or persons bringing such action, shall, before the same be commenced, demand possession of such land from the occupant thereof, and offer to have the value of the improvements thereon appraised according to the provisions of this act, and to pay the amount of such appraisement; and the said occupant shall neglect or refuse to join in such appraisement, or to receive the money at which the said improvements shall be valued, the plaintiff shall, in case he obtains judgment against the defendant, or prevail in such action, recover costs, to be taxed, against the said defendant, or tenant; but if such demand, offer and refusal, as aforesaid, shall not have been made prior to the bringing such action, the plaintiff therein shall recover no costs.

V. *And be it further enacted*, That if any person shall, under colour of title bona fide obtained, be in the actual possession of, and have made improvements to the value of twenty-five dollars, on any of the lots of land in the military tract, which shall appear by the report of the attorney-general to the commissioners of the land office, to have escheated to the people of this state, and that all necessary proceedings have been had to perfect the title of the said people to the same, it shall be the duty of the said commissioners, upon the application of such possessor, to direct the surveyor-general to lay off not exceeding two hundred acres of the lot so possessed, including the improvements of the applicant, and to cause the value thereof, at the time such improvement commenced, to be ascertained by the appraisement of two persons, to be appointed by the surveyor-general, which sur-

vey and appraisement shall be at the expense of the possessor, and the surveyor-general shall make a report to the said commissioners of the bounds of such lands so surveyed, and of the appraised value thereof, and thereupon the said commissioners shall cause letters patent to be issued to the possessor for the same upon the payment into the treasury of this state, of the one eighth part of the said appraised value, and securing the payment of the residue thereof, in six annual payments thereafter, with interest at the rate of six per cent per annum, by a bond and mortgage on the said land, executed to the people of this state, and delivered to the comptroller: *And further*, That the residue of such escheated lands, and so much thereof as shall not be applied for as aforesaid, within the time herein limited, shall be sold by the surveyor-general, as a part of the unappropriated lands: *Provided always*, That every possessor of such lands shall make application as aforesaid, within ten months after the passing of this act, or after the report of such escheat shall have been filed by the attorney-general in the secretary's office.

VI. *And be it further enacted*, That when there shall be more than one actual occupant on any one lot which shall have escheated as aforesaid, it shall be the duty of the surveyor-general to survey and lay out the said lot into as many parts as there are actual occupants thereon, and in such manner as to include the improvements of each of the said occupants, and in such proportions among them as he shall think proper, and the letters patent shall be issued according to such survey.

VII. *And be it further enacted*, That the rules of descent established by the act, entitled "an act to abolish entails, to confirm conveyances by tenants in tail, to regulate descents and to direct the mode of conveyances to joint tenants," shall apply to and govern in all the cases provided for by the first section of this act, except where the lands specified in any of the letters patent therein mentioned, or any part thereof, were on the fifth day of April, 1803, held by bona fide purchasers, or devisees under any person or persons who would have been the heirs at law of the patentees if this provision had not been made.

VIII. *And be it further enacted*, That it shall be the duty of the clerks of the several counties comprehending any part of the Military tract, to make and keep a numerical index of the military lots within his county, which shall contain, under the number of the lot, a reference to all the conveyances in his office, for the whole or any part of the lot, specifying the book and page in which they are recorded: *And further*, That the said index shall be considered as part of the public papers belonging to such offices respectively.

IX. *And be it further enacted*, That the supervisors of the several counties aforesaid, be authorised to allow to the several clerks aforesaid, a reasonable compensation for their services in making the said index, to be levied and raised as a part of the contingent charges of their county.

Thereupon letters patent for such 300 acres shall issue to occupant on paying one eighth of the appraised value, etc.

And the remainder of the land escheated shall be sold as unappropriated. *Provide*

If there are more than one occupant on the land, letters patent to issue to each for such proportion as the surv-gen. shall think just. W. v. 3. 399 Sec. 26 c. 28 § 4

Rules of descent as to lands mentioned in the first section W. v. 3. 399 sess. 20. c. 28 § 8
John. Rep. 332
9 John. Rep. 335.
8 John. Rep. 137.
10 John. Rep. 163.

Clerks of certain counties to keep a numerical index of military lots, etc. Sec. 34 c. 2.

And such index declared a public record Supervisors to allow the clerks compensation Sec. 34 c. 7 § 2.

An ACT for the relief of Cities and Towns from the maintenance of Bastard Children.

Passed February 25th, 1813.

[V.S. v. 1. 69.—J.&V. v. 2. 203, 302.—Gr. v. 2. 32, 134.—Ibid v. 3. 56.—K.&R. v. 1. 194, 566.—W. v. 4. 563.]

Justices to
take order for
indemnity of
the town a-
gainst the sup-
port of bastard
children
K and R v 1
194
W v 4 563
Sess 20 e 180
9 John Rep
119
6 Geo 2 e 31
18 El e 3
3 Car 1 e 4
13 and 14 Car
2 e 13
[9 John Rep
307. Action
lies by the o-
verseers upon
the order for
the weekly
support]
1 B & Abr 317,
318 letter D
8 Mod 4
Sir 503
Sess Cas 294
2 Selk 474 p
15
Dalt 52
[Is the mother
of a bastard
child entitled
to the custody
of it
2 John Rep
377 and the
cases there ob-
tained]
1 John Rep
466, 487
3 Ibid 23

Any justice in
the county
may issue a
warrant a-
gainst the pu-
tative father
K and R v 1
194 § 2
6 Geo 2 e 31
[It must be on
application,
etc or false
imprisonment
lies against the
justice
10 John Rep
93]
The putative
father to be
committed, or
find security,
etc.
[Sessions have
not original
jurisdiction in
making an or-
der of affilia-
tion, etc.
10 John Rep
19]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That any two justices of the peace of any city or county, one whereof residing in or near the town within which any bastard or child begotten and born out of lawful matrimony, shall be born or shall be chargeable, upon examination of the matter, shall, in their discretion, make order for the better relief of every such city or town, and shall likewise, by like discretion, make order for the keeping of every such bastard child, by charging such mother or reputed father with the payment of money weekly, or other sustentation for the support of such child as they shall think meet; and if, after the same order by them subscribed under their hands, the mother or reputed father, upon notice thereof, shall not for his or her part observe and perform the said order, then every such party so making default, shall be committed to the house of correction, or for the want thereof, to the common gaol of such city or county, there to remain without bail, except he or she shall put in sufficient surety to perform the said order, or personally to appear at the next general sessions of the peace, to be holden in and for the city or county where such order shall be taken; and also to abide such order as the said justices of the peace, or the major part of them, in their said sessions shall make in that behalf, if they then and there shall make any, and that if at the said sessions, the said justices shall make no other order, then to abide and perform the order before made.

II. *And be it further enacted,* That if any woman shall be delivered of a bastard child, which shall be chargeable or likely to become chargeable to any city or town, or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable as aforesaid, and shall in either case, in an examination to be taken, in writing upon oath, before any justice of the peace of any city or of any county wherein such town shall be, charge any person with having gotten her with child, it shall be lawful for such justice, upon application made to him by the overseers of the poor of such city or town, or persons acting as such, or by any one of them, to issue his warrant for the apprehending such person so charged as aforesaid, and for bringing him before such justice, or before any other justice of the peace of such city or county; and the justice before whom such person shall be brought, is hereby authorised and required to commit such person to the house of correction, or common gaol of such city or county, unless he shall give security to indemnify such city or town, or shall enter into a recognizance with sufficient surety, with condition to appear at the next general sessions of the peace, to

be holden for such city or county, and to abide or perform such order as shall be made in pursuance of this act.

III. *And be it further enacted*, That if the woman so charged any person, shall die or be married before she shall be delivered, or if she shall miscarry of such child, or shall appear not to have been with child at the time of her examination, then such person shall, at the next general sessions of the peace to be holden for such city or county, be discharged from his recognizance, or immediately released out of custody, by warrant under the hand and seal of any one justice of the peace of such city or county.

If the woman marry before she be delivered or miscarry of such child, the putative father to be discharged.
K & R v 1 198
§ 3
6 Geo 2 c 31

IV. *And be it further enacted*, That if any woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable to any city or town, or shall declare herself to be with child, and that such child is likely to be born a bastard, and to become chargeable to any city or town, and shall on examination to be taken in writing, upon oath, before any one justice of the peace of any city or of any county, wherein such town is, charge any person with having gotten her with child in any county or city within this state, and that such person shall reside or be in any other city or county, it shall be lawful for such justice, upon application made to him by the overseers of the poor of such city or town, or persons acting as such, or by any one of them, to issue his warrant for the apprehending such person so charged as aforesaid, and for bringing him before such justice, or before any other justice of the peace of such city or county, and it shall be the duty of the constable or other proper officer, to whom such warrant shall be directed, to carry the same to some one justice of the peace of such city or county wherein such person resides, or is said to reside or can be found; and such justice is hereby required, upon proof being made upon oath, of the hand writing of the justice granting such warrant, to endorse his name on such warrant, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in such other city or county where such warrant was endorsed, and to apprehend and take such person so charged as aforesaid, before the justice who endorsed such warrant, or some other justice of the peace of such city or county where such warrant was endorsed; and in case such person so apprehended and charged as aforesaid, shall be willing and ready to give security to indemnify such city or town where such bastard child is chargeable, or likely to become chargeable, or enter into recognizance for his appearance, at the next general sessions of the peace to be held in and for the city or county wherein such town lies, such justice of such other county or city, before whom such person shall be brought, shall take such security or such recognizance as aforesaid, in the same manner as any justice of the peace of the proper city or county might have done; and the justice so taking such security or recognizance shall deliver the same, together with all other proceedings had or done by him in the premises, to the constable or other person so bringing such person before him, who are hereby required to receive the same, and to de-

The woman's examination to be taken on oath
1 K and R v 2
194 § 4
6 Geo 2 c 31
24 Geo 3 c 47

A warrant to issue on the application of the overseers of the poor
9 John Rep
119

In case the putative father resides in another county, how to proceed on the warrant

The justice of such other county may recognize of finder, &c.

And such recognizances and other proceedings to be delivered to the constable or person bringing the warrant

Never over such recognizance and other proceedings to the justice or justices who originally granted such warrant, or to some other justice of the peace of such county or city where such warrant was granted, and such justice or justices are hereby required to proceed as if the said recognizance and other proceedings were had or taken by themselves; and such recognizance and other proceedings shall be as effectual in law, as if the same had been entered into, taken and acknowledged before a justice of the peace for the proper city or county where the said bastard child is chargeable or likely to become chargeable, and the same proceedings shall be had thereon; and in case such constable or other person to whom such recognizance and other proceedings shall be so delivered, shall refuse or neglect to deliver over the same as herein before directed, such constable or other person shall forfeit the sum of one hundred and twenty-five dollars, to be recovered against him by action of debt or by information, in any court of record, by any person who will sue for the same; and if such person, so apprehended as aforesaid, shall not give such security, or enter into such recognizance, to the satisfaction of the justice, before whom such person shall be so brought in such other county or city; then the constable or other person shall take such person so apprehended, before the justice who issued such warrant originally, or before one of the justices of the peace of the city or county where such warrant was issued. And the said justice or justices shall proceed against such person so charged and so brought before him or them, as they might or ought to have done, if the said person resided in the county or city where such warrant was issued.

Penalty for not returning recognizance, etc.

If offender do not give security, etc. then to be brought before the justice issuing the warrant

No justice liable civilly or criminally for endorsing the warrant

Recognizance if forfeited to be sued in the court of common pleas of the county where party can be found, and not to be estreated into the exchequer G.K. and R. v. 1 124 § 5

And such court may compound with the offender,

And further, That no action of trespass, information, indictment or other action shall be brought or prosecuted by any person whatsoever against the justice who shall endorse such warrant, for or by reason of his endorsing the same, but such person shall be at liberty to bring or prosecute his action against the justice who granted such warrant, in the same manner as he might have done if this act had not been passed.

V. And be it further enacted, That if any recognizance already taken, or hereafter to be taken in any case concerning bastardy shall become forfeited, such recognizance shall not be estreated and sent into the court of exchequer, but the court of sessions of the peace to which such recognizance may be returned, shall direct the clerk of the city or county to prosecute a suit upon the said recognizance, in the court of common pleas of the city or county where the person or persons who entered into such recognizance can be found, and the money, when recovered, shall, after deducting the charges of such recovery, be paid by such clerk to the overseers of the poor of the city or town, for the indemnification whereof such recognizance was taken, to be applied to the relief of the poor thereof; and it shall be lawful for the court of sessions, into which such recognizance is or shall be returned at any time after the forfeiture thereof, to order the clerk of the city or county, to compound for the penalty thereof, in such manner and upon such terms as the said court shall judge proper.

VI. *And be it further enacted*, That upon application made by any person who shall be committed to any house of correction or gaol by virtue of this act, or by any person in his behalf, to any one justice of such city or of such county, residing in or near such town, such justice is hereby authorized and required to summon the overseers of the poor of such city or town, to appear before him at a time and place to be mentioned in such summons, to shew cause why such person should not be discharged; and if no order shall appear to have been made in pursuance of this act, within eight weeks after such woman shall have been delivered, such justice shall discharge him from his imprisonment.

Any justice may discharge the putative father from prison, if no order be made in eight weeks after delivery. K&R v. 1 194. § 8

VII. *And be it further enacted*, That it shall not be lawful for any justice of the peace to send for any woman whatsoever, in order to her being examined concerning her pregnancy, or supposed pregnancy, until one month after she shall be delivered, or to compel any woman before she shall be delivered, to answer to any question relating to her pregnancy.

The mother not compelled to answer till one month after delivery. K&R v. 1. 194 § 7

VIII. *And be it further enacted*, That it shall be lawful for the overseers of the poor of any city or town where any bastard child shall be born, to apply to any two justices of the peace of the city or county where the estate real or personal or any part thereof, of any putative father or lewd mother of such child, who shall have run away out of such city or town, shall be, and by warrant under the hands and seals of the said two justices, who are hereby authorised and required to issue the same, to seize and take the goods and chattels, and to let out and receive the annual rents and profits of the lands and tenements of such putative father or lewd mother so absconding as aforesaid, towards the bringing up and providing for such bastard child, and so soon as the said seizure shall be allowed of, and confirmed by the justices in their general sessions of the peace, it shall be lawful for the overseers of the poor of such city or town, or any two of them, from time to time, and as often as the case may require, to sell so much of said goods and chattels at public vendue, to the highest bidder, and to receive the said rents and profits or so much thereof as shall be ordered by the said sessions, and to apply the money arising therefrom towards the bringing up and providing for such bastard child: *And further*, That the said overseers of the poor shall be accountable to the justices of the peace in their general sessions, for all such monies as shall arise from every such sale, or be received by them for the rents and profits of such lands or tenements.

If the mother or putative father run away, their estates liable to seizure for support of child. K&R v. 1. 194 § 8
13 and 14. Car 2 c. 12. § 19
7. Jac. 1. c. 4 § 8

IX. *And be it further enacted*, That any person who shall think himself aggrieved by any judgment or order of any two justices of the peace made by virtue of this act, may appeal to the next general sessions of the peace to be holden in and for such county where such judgment or order shall be made, who are hereby authorised and required to hear and determine such appeal, and to do justice therein according to the merits of the respective cases: *And further*, That no justice of the peace in any city or town, who shall have been present at, or assisted in giving

Appeal given to the sessions from an order of bastardy. Session 33. ch 100. § 1
3. John. Rep. 23
9. Ibid. 367

No justice concerned in

making the order to pre-
side at sessions
on such ap-
peal
Notice of ap-
peal to be
given to the
overseers of
the poor
Session 33. ch
109 § 2

If notice in-
sufficient,
court may ad-
journ the ap-
peal

Costs and
charges to be
awarded to
prevailing
party on ap-
peal
Session 33- ch
109 § 3

How to be
collected if
party live out
of the county

On appeal.
sessions to be-
gin *de novo*
and prevail-
ing party be-
low, to prove
his case, etc.
3 John. Rep 23
Session 33. ch
109. § 4
Any person
sued for any
act done under
this act may
plead the gen-
eral issue
K&R v. 1. 104
§ 9
And if defend-
ant succeed,
plaintiff to
pay treble
costs

any judgment, or making out any such order, shall sit in any court upon any such appeal as aforesaid.

X. *And be it further enacted*, That no appeal from any judgment or order whatsoever, of any justices of the peace, shall be proceeded upon in any court of general sessions of the peace, unless reasonable notice in writing be given by the party appealing, to the overseers of the poor, or one of them, of such city or town as shall be affected by such judgment or order, the reasonableness of which notice shall be determined by the justices of such general sessions of the peace to which the appeal shall be made; and if to them it shall appear that reasonable notice was not given, then they shall adjourn the same to some future day in the then court, or to the next general sessions of the peace, and then and there finally hear and determine the same.

XI. *And be it further enacted*, That the said justices at their general sessions of the peace to be holden in any city or county within this state shall award to the party in whose favor any such appeal shall be determined, or in case notice of any such appeal be given, and not afterwards prosecuted to effect, then to the party to whom the said notice shall appear to have been given, such costs and charges as the said justices in their discretion shall deem reasonable to be paid by the party against whom such appeal shall be determined, or who gave notice of such appeal as aforesaid, and did not prosecute the same: *And further*, if in any of the cases aforesaid, the person ordered to pay such costs and charges shall reside in any city or county out of the jurisdiction of such court of general sessions of the peace, it shall be lawful for the party to whom such costs and charges were directed to be paid, to sue for and recover the same of the person against whom such order was made, with costs of suit, in an action for monies had and received to the plaintiff's use, in any court in this state having cognizance thereof, in which action a true copy of the order of such court, containing the award of such justices in their court of general sessions of the peace, signed by the clerk, and sealed with the seal of the same court, when produced, shall be sufficient evidence for the recovery of the monies so awarded.

XII. *And be it further enacted*, That on the hearing of appeals under this act, the courts of general sessions shall begin *de novo*, and shall require the party in whose favor the order appealed against was made to substantiate the same by evidence, except in case of the death of the mother of such child.

XIII. *And be it further enacted*, That if any person shall be sued for any thing which he shall do in execution of this act, he may plead the general issue and give the special matter in evidence, and if a verdict or judgment shall pass for the defendant, or if the plaintiff shall be non-suited or discontinue his suit, the defendant shall recover treble costs, and shall have the like remedy for the same as any defendant hath in other cases.

Act for the relief of Creditors vs. Hein - folio 315.

Act Concerning the Court of Probates June 14 1741 -

CHAP. LXXV.—(R.L.)

An ACT concerning Executors and Administrators, and the distribution of Intestate's Estates.

Passed April 6, 1813.

[Br. ed. 15.—S.&L. v. 1. 15. 307. 315. 432.—V. S. v. 1. 15. 229. 231. 293.—
Ibid. v. 2. 707.—J.&V. v. 1. 277.—Ibid. v. 2. 23. 43. 71. 75. 273. 386.
388.—Gr. v. 1. 334. 363. 238. 213. 367.—Ibid. v. 2. 215. 217. 106. 107.—
K.&R. v. 1. 535.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the executors and administrators of any testator or intestate, with the aid and in the presence of two persons at least, being legatees or creditors of such testator or intestate, and in case of their absence or default, two other persons being next of kin to the deceased, and in their absence or default two other competent persons shall make or cause to be made, a true and perfect inventory of all the goods, chattels and credits of such testator or intestate, and shall cause the same to be indented, one part whereof shall be delivered to the judge of the court of probates or surrogate in whose office the will of the testator was proved or administration granted, within six months after probate of the will or administration granted upon the oath of such executors or administrators to be taken before the said judge or surrogate, that such inventory is just and true, and the other part whereof shall remain with said executors or administrators.

II. *And be it further enacted,* That the persons in whose presence such inventory shall be taken, shall, before they proceed in the same, take before any person authorised to administer oaths in this state the following oath: I do solemnly swear and declare, that I will truly, honestly and impartially appraise the personal property of , deceased, according to the best of my knowledge and ability; which oath shall be filed in the surrogate's office in the county where the same is taken, at the time of filing such inventory.

III. *And be it further enacted,* That, no executor or administrator shall be cited in the court of probates, or be compelled to render an account of the personal estate of his testator or intestate otherwise than by an inventory or inventories thereof, unless it be at the instance or prosecution of some person in behalf of a minor, or having a demand out of such personal estate as creditor, legatee or next of kin.

IV. *And be it further enacted,* That administrators shall have actions to demand, and recover in like manner as executors, the debts due to their intestate, and shall answer and be accountable to others to whom the intestate was holden or bound in the same manner as executors.

V. *And be it further enacted,* That actions of account shall and may be brought and maintained by and against executors or administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

VI. *And be it further enacted,* That executors and administrators shall have actions of trespass for taking and carrying away the goods of their testator or intestate in his life time, and

Inventories
by whom and
how taken etc.
K and R v 1

539 § 1

21-11 s. c. 5

23 and 23 Car

2. c. 30

1 Jac 2. c. 17

[Cases of executors &c

generally

1 Calnes's Rep

124, 191

2 Ibid 101

1 Calnes's ca

in Error, 90,

123

2 Ibid 143, 183

1 John. ca 276

8 Ibid 17 24, 72

97, 209, 280,

376

1 John. Rep

310, 396

2 Ibid 943, 377

471

4 Ibid 190

6 Ibid 111, 159

8 Ibid 120, 126

4407

Persons taking inventory

to take an

oath

Executors, may be cited to account

K and R v. 1

536. § 2

1 Jac. 2. c. 17

§ 6

Administrators, etc.

K and R v 1

536 § 3

1 Calnes's Rep

101—Ib 3 129

2 John Rep

471

2 John. ca 17, 24

1 John Rep

396

Actions of account maintainable by, and against executors and administrators And likewise of trespass pro asportatione bonorum

K and R v 1
536 § 4, 5
4 Ed 3 c 7
2 John Rep
327
Caines's ca in
Error 200
St Westm 2
13 Ed. 1 st. 1 c 23

that any person, his executors or administrators shall have the like actions of trespass against the executors or administrators, or any testator or intestate who in his life time shall have wasted, destroyed, taken or carried away, or converted to his own use the goods or chattels of any such person, and shall have the like process, judgment and execution as in other actions against executors and administrators.

Executors of
executors li-
able to suits
and debts of
first testator
K and R v 1
537 § 6
25 Ed 3 st 5
c 5

VII. *And be it further enacted*, That executors of executors shall have actions of debt, account and trespass for goods carried away of the first testator, and executions of judgments obtained by or of recognizances made to the first testator, in the same manner as he might have, if living, and that such executors of executors shall answer to others for the same as the first executors should do if living.

Executors etc.
liable for
waste
K and R v 1
537 § 7
30 Car 2 st 1
c 7
4 and 5 W and
M c 24 § 12
1 Caines's ca
in Error 96
2 John ca 376
7 John Rep 161
3 John Rep 126
Administrator
de bonis non
may have
scire facias
K and R v 1
537 § 8
17 Car 2 c 8
§ 2

VIII. *And be it further enacted*, That the executors and administrators of every person who as executor, either of right or in his own wrong, or as administrator, shall have wasted or converted to his own use any goods, chattels or estate of any deceased person, shall be chargeable in the same manner as their testator or intestate would have been if living.

IX. *And be it further enacted*, That an administrator *de bonis non*, may sue forth a *scire facias*, and have execution on any judgment obtained by or in the name of any previous executor or administrator of the same estate.

X. *And be it further enacted*, That in all actions depending or to be commenced in any court of record, if any plaintiff happen to die after an interlocutory judgment, and before a final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executors or administrators of such plaintiff; and if the defendant die after such interlocutory judgment, and before final judgment therein obtained, the said action shall not abate, if such action might be originally prosecuted or maintained against the executors or administrators of such defendant, and the plaintiff or if he be dead after such interlocutory judgment, his executors or administrators shall and may have a *scire facias* against the defendant if living after such interlocutory judgment, or if he died after, then against his executors or administrators, to show cause why damages in such actions should not be assessed and recovered by him or them; and if such defendant, his executors or administrators shall appear at the return of such writ, and not show or allege any matter sufficient to arrest the final judgment, or being returned warned, or upon two writs of *scire facias* it be returned, that the defendant, his executors or administrators had nothing whereby he or they might be summoned, and could not be found in the county shall make default; that thereupon a writ of inquiry of damages shall be awarded, which being executed and returned, judgment final shall be given for the said plaintiff, his executors or administrators prosecuting such writ or writs of *scire facias* against such defendant, his executors or administrators respectively.

XI. *And be it further enacted*, That the executors and administrators of every testator or intestate may have and maintain the writ of *idem piate nominis*, in like manner as the same might

Executor and
administrator
may have a
writ of *idem p-
iate nominis*

be maintained by the testator or intestate, if living, in case of the outlawry of any person having the like name as such testator or intestate had.

XII. *And be it further enacted*, That in actions against divers executors or administrators, all the executors or administrators shall be considered as one person, representing the testator or intestate; and in case any of them shall be taken or summoned on a writ or process against them, such as do first appear shall answer the plaintiff; and if judgment shall pass for the plaintiff, the judgment and execution thereon shall be awarded against such of them as have appeared, and all others named in the writ or process, of the goods of the testator or intestate, in the same manner as if they had all appeared: *Provided however*, That the plaintiff, in any such action, may, at his election, sue and prosecute in the manner formerly used in like cases.

Executors, et al.
as defendants,
considered as
one person,
and the first
appearing
shall answer
K&R v 1, 538
§ 11
Ed. 3, st. 1,
c 3

Proviso.

XIII. *And be it further enacted*, That every person who shall obtain or receive any goods or debts of the estate of any intestate, or a release or other discharge of any debt or duty which belonged to any intestate from any administrator of such intestate, upon any fraud, whereby the creditors of such intestate, or any of them, may be injured, or without a full and valuable consideration, such person shall be chargeable as executor in his own wrong, to the value of such goods and debts so obtained, or whereof he shall be so released or discharged, deducting nevertheless, all just debts due to him from the intestate, and all payments made by him, as the same ought to be allowed to lawful executors or administrators, in the course of administration.

Who considered
executors
de sen tort.
K&R v 1, 538,
§ 12
43 Ed. c 8, § 9

Vide references
to sec. 7.

XIV. *And be it further enacted*, That no lands or other real estate of any testator or intestate shall be sold, or in any wise affected by virtue of any judgment or execution against executors or administrators.

No real estate
to be sold under
a judgment against
executor or
administrator
K&R v 1, 538
§ 13

XV. *And be it further enacted*, That all sales made bona fide and lawful acts done by administrators before notice of a will, shall remain valid and unimpeached by executors, on any will afterwards appearing: *Provided*, That such executors shall have the same remedy against the administrators for the goods, chattels and credits, remaining unadministered as before this act.

Acts of administrator before notice of a will, valid, but shall be answerable over to the lawful executor
K&R v 1, 378
§ 14

XVI. *And be it further enacted*, That just and equal distribution of what remaineth clear of the goods and personal estate of any person dying intestate, after all debts, funeral charges, and just expences, first allowed and deducted, shall be made amongst the wife and children, or children's children, if any such there be, or otherwise to the next of kin to the intestate, in equal degree or legally representing their stocks, that is to say, one third part of the surplusage to the wife of the intestate, and all the residue by equal portions to and amongst the children of such person dying intestate, and such persons as legally represent such children, in case of any of the said children be then dead, other than such child or children who shall have any estate by settlement, or shall be advanced by the intestate in his life time, by portion or portions equal to the share which shall by such distribution be allotted to the other children, to whom such distribution is to be made; and in case any child shall have any estate

Distribution of intestate estates, how made
K&R v 1, 538
§ 15
22 & 23 Car. 2,
c 10
1 Jac 2, c 17
2 Bl com 514
Raym. 494
Ld Raym 571

by settlement from the said intestate, or shall be advanced by the said intestate in his life time, by portion not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate shall be distributed to such child or children as shall have any land by settlement from the intestate, or where advanced in the life time of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated; and in case there be no children, nor any legal representatives of them, then one moiety of the said estate shall be allotted to the wife of the said intestate, and the residue of the said estate shall be distributed equally to every of the next of kin of the intestate, who are in equal degree, and those who represent them, but no representation shall be admitted among collaterals after brothers and sisters children; and in case there be no wife, then all the said estate shall be distributed equally to and amongst the children; and in case there be no child, then to the next of kin, in equal degree, of or unto the intestate and their legal representatives, as aforesaid, and in no other manner: *Provided however*, That if after the death of a father, any of his children shall die intestate, without wife or children, in the life time of the mother, every brother and sister, and the representatives of them, shall have an equal share with her.

Previous.

This act not to extend to the estates of *femes covert*, etc.
 R. & R. v 1, § 39
 § 16
 22 & 23 Car. 2, c 10
 20 Car. 2, c 30

XVII. *And be it further enacted*, That nothing in this act contained, respecting the distribution of intestates estates, shall be construed to extend to the estates of *femes covert*, that shall die intestate, but that their husbands may demand and have administration of their rights, credits and other personal estate, and recover and enjoy the same, as fully as they might have done before the passing of this act.

No distribution to be made in one year
 R. & R. v 1, § 39
 § 17
 22 & 23 Car. 2, c 10, § 8
 Executors in certain cases to pay legacies in one year
 Legatees and next of kin to give security, etc.

XVIII. *And be it further enacted*, That no distribution of the goods, chattels and credits, of any intestate, shall be made until the expiration of one year after granting administration thereof; and where no time shall be limited by any last will or testament, for the payment of any legacy therein bequeathed, the executors shall have the space of one year to discharge the same: *And further*, That every person entitled to any legacy or bequest, or to any share on such distribution, shall at the time of payment or delivery thereof, give bond in double the sum of such share or legacy, with two sufficient sureties, to the executors or administrators, conditioned, that if any debts owing by the testator or intestate, shall afterwards be recovered, or duly made to appear, and which there shall be no other assets to pay, and also in the case of a legacy, if no sufficient assets shall thereafter remain, to pay any other legacies which may be due, that then such person shall refund the legacy or share so paid or delivered, or such rateable part, or proportion thereof, with the other legatees or representatives of the deceased as may be necessary for the payment of the said debts, and the costs and charges incurred by reason thereof, and in case of a legacy the proportional part of such other legacies, if there be any.

Persons entitled to legacies, etc., may

XIX. *And be it further enacted*, That it shall be lawful for any person, to whom any legacy, of any sum of money, or other per-

sonal goods or chattels, or residuary part of any personal estate, ^{see in any} ^{court of re-} ^{cord, etc.} ^{K&R. v 1,540} ^{§ 18} ^{2 John. ca. 97,} ²⁰⁰ ^{2 John. Rep.} ²⁴⁸ ^{3 John. Rep.} ¹⁸⁹ ^{7 John. Rep.} ^{99, 404} ^{10 John. Rep.} ^{30, 168} that have been or shall be given by any last will or testament, or who shall be entitled to any share on the distribution of the estate of any intestate, his executors or administrators, to recover the same when due, in an action of debt, detinue or account, as the case may require, in any court of record in this state, if there be more than sufficient assets in the hands of the executors or administrators, to discharge the debts of the testator or intestate, and in the case of a legacy, if such assets be not sufficient to pay all the legacies that may be given, then an abatement shall be made in proportion to the legacies so given; and such person shall recover only a proportional part; and where such person shall be an infant, at the time such legacy or share shall become due, such action may be brought by guardian or next friend, as in other cases; *Provided however*, That no such action shall be maintained against any executors or administrators, until after a reasonable demand of such legacy or share, and an offer of such sureties as above mentioned be made; and if the same be refused, then the person entitled to such legacy or share, shall file the bond with such sureties, the same being first approved of by the court, in the office of the clerk thereof, before obtaining any process against such executors or administrators, otherwise the said process shall abate; *And provided also*, That no action shall be brought in consequence of this act, by any infant, by guardian, or next friend, until such guardian or next friend shall have executed and filed in the office of such clerk, a bond to the said infant, in such sum and with such sureties as the court shall approve, conditioned, that such guardian or next friend, shall duly account to the said infant when of age, or to the executors, or administrators of such infant, in case of his death, for all monies which may be recovered in such suit.

In case of a legacy, when to recover a proportional part only

Demand and security given necessary before suit brought

Proviso as to the case of infants

When and how auditors to be appointed to examine accounts, etc. K&R. v 1,540, § 19

Court to give judgment, and further proceedings prescribed

XX. *And be it further enacted*, That the court in which any such action shall be brought, upon the plea of want of assets to pay all the debts and legacies, or either, may appoint auditors to examine the accounts of the executors or administrators; which auditors, after full hearing and examination thereof, at such times and places as by them shall be appointed, notice whereof shall be given to the parties, shall report how much assets will remain in the hands of the executors or administrators after payment of all the debts, and what part thereof the plaintiff is entitled to recover; and the court shall thereupon give judgment and award execution for the same; but if the plaintiff shall discontinue his suit, or become non-suited, or have judgment against him, the defendants shall have judgment to recover their costs of suit against him; and if the plaintiff shall recover only part of his demand, for want of further assets, and such assets shall afterwards come to the hands of the defendants, the plaintiff shall have a re-*summons* against them and recover the residue of the monies due to him, or his proportion of such assets, and the court is hereby empowered to correct and amend any mistakes or errors in such report, or the accounts so reported, and on consideration of the same, and of the proceedings in such action, to award the costs thereof, or the costs of either party, to be paid by them or

either of them, or out of the estate of the testator or intestate according to justice and equity ; and in case the executors or administrators shall have refused or neglected to pay the plaintiff's demand, or a proportional part thereof when due, without reasonable cause, to award costs against them, to be paid out of their own estate.

This act to
extend to ad-
ministrators
cum testa-
ments annex
K&R. v 1, 241
§ 20
§ 23 Car. 2,
c 10

XXI. *And be it further enacted*, That in all cases where administration shall be granted, with a will or testament annexed, the will of the deceased in such testament expressed shall be observed and performed, and that this act shall extend to administrators with such will annexed, in the same manner as if they were executors named in such will.

In what cases
intestates per-
sonal estate to
be paid into
the treasury
K&R. v 1, 241
§ 24

XXII. *And be it further enacted*, That in all cases where administration hath been, or shall be granted to any person, not the widow of, or not of kin to the intestate, and no person hath or shall, within one year after granting the letters of administration, appear to claim the personal estate of such intestate as next of kin, then, and in every such case, the administrator or administrators shall pay the amount of the personal estate, after deducting the debts and personal charges of the intestate into the treasury of this state, for the benefit of those who may thereafter appear to be entitled to the same.

No judgment
against heir or
devisee to be a
bar to a suit,
etc. against
executor or ad-
ministrator

XXIII. *And be it further enacted*, That no judgment against any heir or devisee for any debt or damages in right of their ancestor or devisor, shall be a bar to any subsequent suit against the executor or administrator of such ancestor or devisee, for the same matter or cause upon which such judgment was obtained, but such action may be maintained and prosecuted in like manner as if no judgment had been obtained against any such heir or devisee : *Provided*, The plaintiff can shew that no sufficient lands or tenements have descended or been devised to such heir or devisee, or an execution against them returned unsatisfied : *And provided further*, That nothing in this section shall be held to extend to debts or legacies expressly charged upon the real estate.

Proviso.
2 John. Rep.
243
3 John. Rep.
189

CHAP. XCIII.—(R.L.)

An ACT for the Relief of Creditors against Heirs and Devisees.

Passed April 10, 1813.

[J.&V. v. 1. 276.—Gr. v. 1. 237.—K.&R. v. 1. 245.]

Creditors may
sue heirs, etc.
K&R. v 1, 245
3 W. and M.
c 14 § 3—29 Car.
2, c 1, § 10
And devisees
6 John. Rep.
89—[As to
heirs, etc. ge-
nerally.
3 Ind 86

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That every creditor, whether by simple contract or specialty, and whether the heirs are mentioned therein or not, may maintain his or her action against the heirs at law of any debtor who hath died or shall die intestate, seized of any lands, tenements or hereditaments, and against the heirs and devisees of such debtor, in case such debtor made any last will and testament, and every such heir and devisee shall be

chargeable for a false plea pleaded, in the same manner as any heir would have been for any false plea pleaded in any action of debt upon specialty, or for not confessing the lands or tenements descended, and all creditors shall be preferred as in actions against executors and administrators.

4 John. Rep. 72
6 Ibid 59
7 Ibid 157.
When answerable for false pleading.

II. *And be it further enacted*, That in all cases where any heir is or shall be liable to pay the debt of his or her ancestor in regard of any lands, tenements or hereditaments, descending to him, and shall alien the same before suit brought, every such heir shall be answerable for such debt, to the value of the land so aliened; in which case all creditors shall be preferred as in actions against executors and administrators, and such execution shall be taken out upon any judgment so obtained against any such heir to the value of the said land, as if the same were the proper debt of such heir; but the lands, tenements and hereditaments, bona fide aliened, before the action brought, shall not be liable to such execution.

Heirs aliening the land before suit brought liable for the value
K and R. v 1, 245, § 2-3 W. and M. c. 14, § 5

Execution how to issue.

III. *And be it further enacted*, That no judgment against any executor or administrator for any debt, damages or sum of money, in right of his testator or intestate, shall be deemed or adjudged in any wise a bar to any subsequent suit or action against the heirs or devisees of such testator or intestate for the same matter or cause upon which such judgment was obtained, as aforesaid, but such heirs or devisees shall be liable in like manner as if no suit or judgment had been brought or recovered against such executors or administrators: *Provided always*, That such plaintiff shall shew a want of personal assets to satisfy such judgment or an execution thereupon duly issued, or returned unsatisfied: *And provided further*, That nothing herein contained shall be construed to make any heirs or devisees liable to any other person than a creditor of the deceased, by simple contract or specialty, in like manner as is expressed in the first section of this act, and not otherwise.

A judgment against executor, etc. no bar to a suit for the same demand.

Provided.

Further proviso.

IV. *And be it further enacted*, That when any action shall be brought against any heir, such heir may plead *riens per descent* at the time of the commencement of such action, and the plaintiff may reply that such heir had lands, tenements or hereditaments, from his or her ancestor before commencement of such action; and if upon issue joined thereon, it be found for the plaintiff, the jury shall enquire of the value of the lands, tenements or hereditaments, so descended, and thereupon judgment shall be given and execution awarded, as aforesaid; but if judgment be given against such heir by confession of the action, without confessing the assets descended, or upon demurrer, or *nihil dicit*, it shall be for the debt and damages, without any writ to enquire of the lands, tenements and hereditaments so descended.

Heir may plead nothing by descent
K. and R. v 1, 246. § 3
Vide English statutes *supra*
If jury find for the plaintiff, they shall enquire of the lands descended
What judgment on confession, or *nihil dicit*

V. *And be it further enacted*, That every devisee made liable by this act shall be chargeable in the same manner as the heir or heirs at law, notwithstanding the lands, tenements and hereditaments devised, shall be aliened before the action brought, and may plead the like pleas, and shall be liable to the like judgment and execution.

Devisees liable in like manner as heirs
K and R. v 1, 246, § 4
Vide *supra*.

Infant heir or devisee liable in like manner as if of full age

Provided;

VI. *And be it further enacted*, That in any personal action to be brought in the supreme court, or in any court of common pleas, against the infant heirs or devisees of any deceased person, to recover any debt or demand due from such deceased person, the remedy of the plaintiff or plaintiffs shall not be suspended nor shall the action be delayed by reason of the non-age of the heir or heirs, devisee or devisees: *Provided*, That no execution issue in such cause within one year after the rendition of the judgment against such infant.

CHAP. III.—(R.L.)

*An ACT concerning the Supreme Court.**

Passed February 25th, 1813.

[Br. ed. 8, 17—S.&L. v. 1. 372.—V.S. v. 1. 221, 270.—Gr. v. 1. 178, 179.—J. & V. v. 1. 24, 276, 217.—K.&R. v. 1. 314.—W. v. 3. 245.—Sess. 33. c. 193.—Sess. 34. c. 88.]

Terms of the sup. court when and where held
W v 3 245
Sess. 34 c 88
Sess. 33 c 193
§ 44
W v 6 84
Jor V v 124,
2:7
Gr v 1: 179
S Bl Com 30
et seq.
Duration of each term

I. *BE it enacted by the People of the state of New-York, represented in Senate and Assembly*, That the supreme court of judicature of this state shall hereafter be held at the four several terms following, to wit: On the first Mondays of January, May and August, and on the third Monday of October in every year; and that the term commencing on the first Monday of January, shall be called January term, and shall be held in the city of Albany; and the term commencing on the first Monday of May, shall be called May term, and shall be held in the city of New-York; and the term commencing on the first Monday of August, shall be called August term, and shall be held in the said city of Albany; and the term commencing on the third Monday of October, shall be called October term, and shall be held in the said city of New-York; and that the said several terms of the said court may be continued and held from the time of the commencement thereof, every day except Sunday, until and including the third Saturday after the commencement of each term: *Provided*, That no process issuing out of the said court shall be tested or made returnable in the third week of any of the said terms.

Common days of return of writs
K and R v 1
314 § 3
§ 11 3 et 2
§ 2 11 3 et 13
16 Car 1 e 6
24 Geo 2 e 41
When to be tested, and returnable

II. *And be it further enacted*, That there shall be in each of the said terms, two common days of return only, that is to say, the first day and the Tuesday in the next ensuing week of each term, but that the process in proceedings by bill or otherwise, except on original writs, if issued in term, may be tested any day in that term, and be made returnable on any day in the same term, or the next term; and if issued in the vacation may be tested on

[* *The Supreme Court* first established by law in 1691, after some subsequent laws on the subject it was at length regulated and fixed by an ordinance from the Governor and Council, May 15, 1699, and by an additional ordinance of April 3, 1704, and from that time till the adoption of the constitution of the state, in 1777, was held under those ordinances only.—Vide Smith's history of New-York, published in 1757, at London, page 31, in Notes, and also pages 75, 245. Vide also Br. Ed. in Appendix, for the two ordinances at large. By a law of Nov 1, 1683, the court of chancery was declared the *supreme court* in matters of equity, and the oyer and terminer in matters of law.—Vide original act on file in secretary's office.]

any day in the preceding term, and be made returnable on any day in the next term.

III. *And be it further enacted*, That all writs and process returnable in the said court, shall be made returnable as follows, that is to say: "Before our justices of our supreme court of judicature, at the City-Hall of the city of New-York," (or at the Capitol in the city of Albany, as the case may be) and proceedings in the said court which have been supposed to be before the people of this state, shall be before the justices of the people of the state of New-York, of the supreme court of judicature of the same people: *And further*, That it shall be lawful to use paper instead of parchment in all proceedings in the said court, except as to the process of the same.

Writs and process how returnable
K and R v 1
314 § 2

Paper instead of parchment used, etc
K and R v 1
314 § 4

IV. *And be it further enacted*, That no issue in any civil cause shall hereafter be tried at the bar of the said court, without the leave of the said court for that purpose first had and obtained: *And further*, That when a bill of exceptions shall be taken on the trial of any issue joined in any cause in the supreme court of this state, it shall be the duty of the justice who puts his seal thereto for a witness, to return the same bill into the said court at the next term thereof, who shall proceed to judgment according to the same exception, as it ought to be allowed or disallowed, and may grant a new trial thereon in their discretion; and the said bill of exception together with the said judgment thereon, shall be made matter of record: *Provided always*, That nothing herein contained shall be construed to affect the right of bringing a writ of error on such judgment, which writ of error shall be a stay of all proceedings from the bringing thereof, in the same manner and on the same terms as a writ of error is now a stay of proceedings.

No trials to be at bar without the leave of the court
K and R v 1
314 § 5

Bills of exceptions how returned, etc
Less 32 c 186
§ 5
W v 5 508

St. Westm. 2
13 Ed 1 c 31
But not to affect the right of bringing a writ of error
(Bill of exceptions don't lie to the general sessions.)
3 John Rep 23-1

V. *And be it further enacted*, That in case any casualty shall hereafter prevent all the judges of the said court from attending at any term thereof, on the first day of such term, it shall be lawful for the clerk of the said court, at any time after five o'clock in the afternoon of such day, to open the said court by proclamation, and immediately to adjourn the same to the next day, and so to open and adjourn the said court from day to day, until the judges of the said court, or one of them, shall appear, when the said court shall and may proceed to business, as if the same had been opened and adjourned by a judge thereof.

If all the judges fail in attending the first day of the term, the clerk after 5 PM. may open and adjourn the court, etc.
34 sess c 88 § 2
W v 6 170 § 2
1 Ed 6 c 7
31 El c 1
16 Car 2 c 8

VI. *And be it further enacted*, That there shall be three clerks of the said court, who shall have like powers, be subject to the like duties, and be entitled to like fees for services performed; and that one of the clerks of the said court shall keep his office in the city of New-York, and shall attend the said court and officiate as clerk thereof, when the same court shall sit in the city of New-York, and one of the said clerks shall keep his office in the public building in the city of Albany, and shall attend the said court, and shall officiate as clerk thereof, when the same court shall sit in the city of Albany; and the other of the said clerks shall keep his office in the village of Utica, in the county of Oneida; and that it shall be lawful for the justices of the said court, from time to time, to direct the removal of such records and papers as they shall think proper, from either of the said clerk's offices in the

Three clerks to be appointed to the court
W v 5 180 § 4
Sess 30 c 153

One in N York

Another in Albany

And the third in Utica
The court may direct the removal of the records from

either of the clerk's offices to the one in the city of Albany

And may direct destruction of certain records

Transcripts of the docket of judgments to be delivered every term by each of the clerk's to the other

K and R. v 1 389. § 5
W. v 5, page 151, 323

And shall be entered in a book by each clerk

The court to have 3 seals, and each of the clerks shall have the custody of one
K and R. v 1 315 § 7
Either of the said clerks may tax costs and sign judgment rolls

A reporter of adjudged cases in the supreme court and court of errors to be appointed
W. v 3, 466, § 1
Secs. 27. a. 66

Salary of reporter
W. v. 5. 494
Secs. 32. ch 124

The reporter at his own expense to furnish each of the courts of common pleas with the printed reports
W. v 5. 494
§ 1
Secs. 32. c. 124

city of New-York, and in the village of Utica, to the clerk's office in the city of Albany, and also by an order of the said court, to direct the several clerks of the said court, or either of them, to destroy such records and papers (judgment rolls and executions excepted) now filed, or that may hereafter be filed in the said offices, or either of them, as the justices of the said court shall deem to have become useless.

VII. *And be it further enacted*, That the said several clerks of the said court shall respectively deliver each to the other, on or before the last day of every term, at the place where the supreme court shall then be held, a transcript of the docket of all judgments that shall have been docketed in his office as aforesaid, during the preceding term and vacation, and before the first day of the term in which such transcript shall be delivered, which transcript shall be certified by the clerk in whose office it shall be made to be a true copy of the original docket in his office, and shall be entered in a book in the office of the clerk receiving the same, as part of the docket of judgments, and which book shall be provided for that purpose by each of the said clerks in his office.

VIII. *And be it further enacted*, That there shall be three seals of the said court, and the description of the same in writing deposited and recorded in the office of the secretary of this state, shall remain as public records, and that each of the said clerks shall have the custody of one of the said seals, and all process and other proceedings issued under either of the said seals shall be equally valid: *And further*, That all costs and judgment rolls in the same court may be taxed and signed by either of the said clerks.

IX. *And be it further enacted*, That it shall and may be lawful for the justices of the said court, from time to time, to appoint by license under the hand and seal of the chief justice of the said court, during the pleasure of the said court, a person as a reporter* of the said court, whose duty it shall be to report the cases decided by them, and the court for the trial of impeachments, and the correction of errors, or such thereof as may be deemed important to be reported, and to cause the same to be printed and published as soon as conveniently may be after the expiration of each term; *And further*, That the said reporter shall receive a salary of twelve hundred and fifty dollars per annum, until the twenty-seventh day of March, one thousand eight hundred and fourteen, to be paid quarter-yearly by the treasurer on the warrant of the comptroller.

X. *And be it further enacted*, That the said reporter shall, at his own expense, when printed, furnish one copy of each successive number, or volume of his said reports, for the use of such of the courts of common pleas in the several counties of this state, which said numbers or volumes shall be delivered to the secretary of this state, or to the respective clerks of the said several

* George Caines, Esq. was the first reporter under the original act, and published 3 volumes of reports, and 2 of cases in the court of Errors. William Johnson, Esq. the present reporter succeeded him, and has already published 3 volumes of cases adjudged prior to the year 1803; and 9 volumes of reports of cases adjudged subsequent to that time.

courts of common pleas, who are hereby directed to give their receipts for the same, the delivery whereof to the secretary of the state, shall be deemed a compliance with the requisitions herein contained.

XI. *And be it further enacted*, That the recorders of the several cities of New-York, Albany and Hudson shall be ex-officio commissioners, equally authorised and empowered with the justices of the supreme court, to do and execute every act, power and trust, which the said judges respectively may do and execute out of court in all cases both civil and criminal, and also to allow writs of habeas corpus, and writs of certiorari, and to admit prisoners to bail in all cases, in like manner as the said justices of the said court may do, and in case of the absence from either of the said cities of New-York or Albany, at any time of the recorder of either of the said cities, the duties and services, he is authorised and required to do and execute as a commissioner by this act, by the act, entitled "an act for relief against absconding and absent debtors," and by the act, entitled "an act giving relief in cases of insolvency," the clerk of the supreme court holding his office in the said city, is hereby authorised and required to do and execute for the time being, during such absence, and the said clerks shall receive the like fees now allowed by law to the said commissioners for such services.

XII. *And be it further enacted*, That the said court shall, by one or more commissions under the seal of the same, from time to time, as need shall require, empower such and so many persons as they shall deem fit in every county, to take affidavits of any person desirous to make the same, concerning any cause or matter depending, or any proceedings to be had in the said court, or in the court of exchequer, and every affidavit so taken, shall be of like force as affidavits taken in the said courts respectively, or before a judge thereof; and it shall also be lawful for any judge of any court of common pleas, or any clerk of any county, or any mayor of any city in this state to take affidavits, to be read in the said supreme court, and every person who shall commit perjury in any affidavit made before any such commissioner, judge, clerk or mayor as aforesaid, shall incur the same penalties, as if such affidavit had been made in open court.

XIII. *And be it further enacted*, That if any person shall hereafter be arrested upon any process issuing out of the said court, whereon a recognizance may now be taken before one of the judges of the said court, it shall and may be lawful for any judge of any court of common pleas in this state, to take any such recognizance, and thereupon deliver the same to the officer who shall make the arrest, whose duty it shall be to transmit the same with the process to the clerk of the supreme court, residing at the place where the court shall be to be holden, and the return of such process and recognizances so taken, shall be deemed as valid as if taken before a judge of the said supreme court.

XVI. *And be it further enacted*, That the person administering the government of this state is hereby authorised, at any time during the vacation of the supreme court, or of any mayor's court,

Recorders of New-York, Albany and Hudson to be ex-officio commissioners to perform every duty of a judge of the sup. ct. as chambers civil and criminal K and R. v 2 310. sec 8 W v 5. 408-9 And also to allow writs of habeas corpus and certiorari, to admit prisoners to bail And to act under the laws against absconding debtors or act. If the recorder be absent, the clk. of the supreme ct. may perform his duties

Com'rs. to take affidavits to be read in the sup. ct. to be appointed by said court V 8. v 1 570 Ge. v 2. 118 J. and V. v 2 208 K and R. v 1 310. 400 W. v 5. 501 Secs. 32. ch 137. sec 3 Any judge of any court of com. pleas, any mayor of any city, and any clk. of any county may take such affidavits

A judge of any court of com. pleas may take a recognizance upon process out of the sup. court which a judge of that court might take W. v 6. 179 Secs 34. ch 88. sec 3

In case of war, pestilence, etc. the executive

May direct the supreme court or any mayors court or common pleas to be removed.

R. & R. v. 1.
316, § 10.

The place to which the court shall be so removed to be appointed in writing and recorded in the secretary's office and published.

Appointment may be revoked.

When court is removed, the place to which it is so removed shall be the place for the return of process.

court of common pleas or sessions of the peace, in any city or county, if he shall deem it requisite by reason of war, pestilence or other public calamity, or the danger thereof, that the next ensuing term or session of any such court shall be held at a different place from the one where such term or session would be, to be held by law, to appoint by writing under his hand, and to be recorded in the secretary's office, and published in such and so many public newspapers as he may deem requisite for the due notice thereof, such different place for holding such ensuing term or session as he shall deem most eligible; and at any time thereafter, during such vacation, to revoke every such appointment, and in like manner to appoint a place a-new, or leave such term or session to be held at the place where, by law, it would have been held; and whenever such term or session shall be held at any place so appointed, all process shall be returned, and all persons shall be held to appear at such place, equally as if such term or session was held at the place where, by law, the same was to have been held.

CHAP. XVI.—(R.L.)

An ACT to appoint Commissioners to perform certain duties of Judges of the Supreme Court..

Passed February 25, 1813.

[W. v. 4. 305.—Ibid v. 6. 54.—Sess. 33. c. 144.]

Two commissioners to be appointed, one in Oneida and the other in Ontario County.

W. v. 4. 305
Sess 28. c 134
Sess 33. c 144

Powers and duties

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall, from time to time, appoint two fit and proper persons as commissioners, one of whom shall reside in the county of Oneida, the other in the county of Ontario, who, by virtue of this act, shall severally be authorized and required to perform all the duties of a judge of the supreme court, and to do and execute every act, power and trust, which, according to the practice of the said court, the judges thereof may perform and execute out of court, in all cases both civil and criminal; to allow writs of *habeas corpus* and writs of *certiorari*, and also to execute the act, entitled "an act for relief against absconding and absent debtors," and the act, entitled "an act for giving relief in cases of insolvency," in like manner as judges of the supreme court may or might allow and execute the same: *Provided however,* That the present commissioners shall continue in office until others are appointed.

Commissioners to be counsellors of the supreme court and to take an oath

W. v. 6. 54
Sess 33. c 144

II. *And be it further enacted,* That said commissioners shall be counsellors of the supreme court; and each of the said commissioners, before he enters on the duties of his office, shall take and subscribe, before the clerk or one of the judges of the court of common pleas of the county in which he shall reside, an oath well and truly to execute and perform the duties prescribed in and by this act, which oath shall be filed in the office of the clerk of the said county.

III. *And be it further enacted*, That it shall be lawful for the said commissioners to take and receive the same fees for the services performed by virtue of this act, as the recorders of the several cities in this state are allowed by law for the like services.

Fees to be paid commissioners.
W. v 6. 84
Sess 33. c 144
See also Fee bill—36th session.

CHAP. XVII.—(R.L.)

An ACT relative to the acknowledgment and surrender of Bail in the Supreme Court, and to proceedings on recognizances of Bail.

Passed February 25, 1813.

[S.&L. v. 1. 358.—V.S. v. 1. 257.—J.&V. v. 2. 278, 280.—Gr. v. 2. 112, 114.—K.&R. v. 1. 387, 448.—W. v. 5. 116.—Sess. 35. ch. 184.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That hereafter no acknowledgment of special bail shall be taken before any magistrate or court having authority to take the same, unless the bail piece thereof be first duly signed by the person or persons acknowledging the same, with his, her or their proper name or names.

Bail pieces to be signed by the bail

W. v 5. 116
Sess 30. c 107
§ 1

II. *And be it further enacted*, That the several judges and assistant justices of the courts of common pleas within this state, and the several special justices for preserving the peace in the city of New-York, are hereby authorised, in their respective cities and counties where they are commissioned, to take every such recognizance of bail as any person may be desirous to make before them, in any action in the supreme court or court of exchequer, and in such manner and form, and by such recognizance or bail piece as the judges of the supreme court usually take the same; and every recognizance or bail piece so taken, and also every recognizance or bail piece taken by a judge of the supreme court, shall be by the party making the same, or by some one on his behalf, filed in the office of one of the clerks of the supreme court within fourteen days after taking the same; and the said judges and assistant justices of the courts of common pleas, and the said special justices, shall examine the sureties to any such recognizance of bail or bail piece, when thereunto required by any person interested in or affected by such bail, concerning the value of such sureties estate and personal circumstances, and the plaintiff shall have the like time for excepting against the sureties to be given in manner aforesaid, as is allowed when such recognizance or bail is taken before one of the judges of the supreme court.

Special bail in the supreme court or exchequer may be acknowledged before a judge or assistant justice of the common pleas or a special justice in N. York

K.&R. v 1.
387. sec. 1
Sess 35. c 184
sec 8
4 W. & M. c 4
§ John. Rep.
359.

Or a judge of the sup. court and filed in the clerk's office of the sup court within fourteen days thereafter

The judge &c taking bail may examine them as to their sufficiency

6 John. Rep.
124
Time for excepting to bail
5 John. Rep.
358

Surrender how and before whom may be made
K.&R. v 1.
387—sec. 2

1 Calmes' Rep.
9. 409.—3 Edw
136

III. *And be it further enacted*, That it shall be lawful for the defendant, in any action in the supreme court, to surrender himself, or for his bail or manucaptor to surrender him, before a judge of the court of common pleas for the county where the defendant shall or may be found; and the judge before whom the surrender shall be made, shall thereupon, by a committitur to be endorsed on a copy of the bail piece, commit the defendant to the gaol of the county accordingly; and the sheriff shall also endorse on the said

1 John. ca. 28
320—2 ib. 290
763

2 John. Rep.
101 482—4 ib.
810 407—7 ib.
245.

Committeer
how gives
Sheriff to give
a receipt of
prisoner
And the same
being proved
or acknowledged

ged
An order shall
be made to
shew cause
why exonerator,
&c.

9 John. Rep.
300 393

Special bail
allowed in ac-
tions of tres-
pass on lands.

K. & R. v. 1.
388. sec. 3

When plain-
tiff may file
common bail
for defendant

K. & R. v. 1.
388. sec. 4

Special bail
not to be sued
till execution
against the
body of prin-
cipal be issued
returned and
filed

K. & R. v. 1. 448
§ 1.
Sem 24. c 136
§ 1.

3 John. Rep.
514.

Duty of the
sheriff in
serving such
process

Proceedings to
charge the
bail

K. & R. v. 1.
449. § 2.
7 John. Rep.
518

Other cases of
bail generally,
see—1 Calmes

Rep. 11. 55. 488.—2. Ibid. 98.—3. Ibid. 323.—1. John. ca. 320. 334. 300. 306. 413.—2. Ibid. 107. 283. 291.—
2. John. Rep. 100. 198. 293.—3. Ibid. 246. 465. 514.—4. Ibid. 185. 207.—5. Ibid. 302.—6. Ibid. 97. 126. 328.—
7. Ibid. 218.—8. Ibid. 26. 25. 351.—9. Ibid. 72. 80. 84. 306. 327. 391.]

copy of the bail piece a receipt, purporting that the defendant hath been delivered to and received by him by virtue of such committitur, and which copy of the bail piece, the receipt of the sheriff thereon being first acknowledged by him, or proved by a subscribing witness thereto, before the judge who shall so commit the defendant, or before a judge of the supreme court, or a commissioner for taking affidavits to be read in the said court, being filed in the office of one of the clerks of the said court, a judge of the said supreme court may thereupon make an order for the attorney of the plaintiff to appear and shew cause why an exoneratur should not be endorsed on the original bail piece, and further proceed therein as if the surrender had been made before a judge of the said supreme court.

IV. *And be it further enacted*, That in all actions of trespass upon land, the plaintiff shall be entitled to special bail, and an *actioem* or proper clause for that purpose may be inserted in the first process; and the plaintiffs shall have all the advantages thereon, and upon the bail bond to be taken on the arrest, as in other actions where the defendant is held to bail, and both parties shall be subject to such discretionary rules and orders of court, respecting such suits in trespass and on the bail bonds, as are used in other cases.

V. *And be it further enacted*, That in cases where special bail may be required, if the defendant shall not cause the same to be given within double the time required for that purpose by the rules of the court in which the cause may be depending, it shall be lawful for the plaintiff to file common bail for the defendant, and proceed to judgment in like manner as if special bail had been put in.

VI. *And be it further enacted*, That hereafter no suit shall be commenced upon any recognizance of bail in any civil action, until a writ of *capias ad satisfaciendum* or *testatum capias ad satisfaciendum* shall have issued against the defendant in the original action, directed to the sheriff of the county in which such defendant was arrested or taken, and such sheriff shall have returned thereon that the said defendant was not found within his county; and if any action shall hereafter be commenced upon such recognizance, and it shall not appear on the trial thereof that a writ of *capias ad satisfaciendum* or of *testatum capias ad satisfaciendum* was issued and returned in the manner herein before mentioned, a verdict shall be found for the defendant: *And further*, That it shall be the duty of the sheriff to endeavor to serve such writ upon the defendant, any directions which he may receive from the plaintiff therein, or his attorney, to the contrary notwithstanding.

VII. *And be it further enacted*, That in all cases where proceedings shall hereafter be had by *scire facias*, upon any recognizance of bail in civil actions, it shall be necessary, in order to charge the defendant therein, to serve the said writ of *scire facias* upon the said defendant, either by reading the same to the defendant, and delivering a copy of the said writ of *scire facias*,

subscribed by the officer to whom the same shall be directed, or by his deputies, at the dwelling-house, or at the usual place of abode of the defendant, or in case such defendant shall have removed out of this state at his last usual place of residence within this state at least six days previous to the return thereof, and the manner of such service shall be endorsed on such writ by the returning officer thereof.

Manner of service of writ to be endorsed.

CHAP. IV.—(R.L.)

An ACT for regulating trials of issues; and for returning able and sufficient jurors.

Passed February 25th, 1813.

[S. & L. v. 1. 300.—V. 8. v. 1. 216, 221, 273.—Ibid. v. 2. 511, 768.—J. & V. v. 1. 305 to 312.—Gr. v. 1. 263 to 271.—Ibid. v. 3. 80, 352.—K. & R. v. 1. 375.—W. v. 3. 139, 252, 437, 464.—Ibid. v. 5, 569.—Sess. 32, ch. 198.—Sess. 34, ch. 98.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That all issues to be joined in the supreme court, or in any other court, and brought into the supreme court to be tried, and which may be triable by a jury, shall be tried in the proper county where the lands, tenements or hereditaments in question shall be, or the cause of action shall arise, unless the said supreme court, upon motion of either party, shall think proper to order the trial to be at the bar of the said court, which shall only be done in cases of great difficulty, or which require great examination; but this section shall not extend to any action merely transitory, nor prevent the said court from ordering trials by foreign juries in all cases where it shall be proper.*

Actions to be tried in their proper counties, unless &c. K. & R. v. 1, 375, sec. 1. 6. R. 2. c. 2. 4. H. 4. c. 18. 21 Ed. 1. st. 1. 3 Bl. Com. 304 349, 384.

II. *And be it further enacted*, That whenever any such issue is to be tried at any circuit court or sittings, the tenor or transcript of the record, with a respite of the jury, or an award of process for their appearance to the supreme court at the next term, unless the justices of the supreme court, some or one of them, at the day and place appointed for holding the said circuit courts or sittings, at which such issue is or ought to be tried, shall sooner come, shall be made and sent, under the seal of the said supreme court, to such of the justices of the same court as may hold the said circuit court or sittings, in the county where such issue is or ought to be tried; and a similar clause shall be inserted in the process for the appearance of the jury at the said circuit court or sittings; and if one party demand and have such tenor or transcript of the record aforesaid to deliver to such justices or justice before whom such issue is to be tried, another tenor

Record to be sent under seal to the circuit or sittings. 1. K. & R. v. 1. 375, sec. 2. 3 Bl. Com. 352, 3. 4. 5. 6. 3 Caines's Rep. 151. 2 John. Rep. 107. Clause to be inserted in the jury process.

[* As to the venue, special and foreign juries, &c. generally.—1 Caines's Rep. 1, 5, 107, 122, 487.—2 Caines's Rep. 46, 100, 245, 304, 374.—3 Caines's Rep. 95, 103, 104, 127, 139.—1 John. ca. 240, 275, 301, 392.—2 John. ca. 111, 116, 335, 381.—1 John. Rep. 313.—2 John. Rep. 374, 453, 481.—3 John. Rep. 139, 447.—4 John. Rep. 481, 492.—6 John. Rep. 132.—8 John. Rep. 354.—9 John. Rep. 81, 248, 259.]

or transcript of the same record shall be made and delivered to the other party if he require the same.

When fourteen days notice of trial required.
K. & R. v. 1.
378, sec. 3.
14 Geo. 2 c. 17
3 Bl. Com. 347
1 Caines's Rep
6, 123, 129,
123.
Six days countermand required.
quinte.

III. *And be it further enacted*, That no indictment, information or cause whatsoever shall be tried before any judge or judges of any court of record within the state, where the defendant shall reside above forty miles from the place where the court is held in which such cause shall be tried, unless notice of trial in writing has been given at least fourteen days before such intended trial: and that in case any party shall have given such notice of trial as aforesaid, and shall not afterwards duly countermand the same in writing at least six days before such intended trial, every such party shall be obliged to pay unto the party to whom such notice of trial shall have been given, the like costs and charges as if such notice of trial had not been countermanded.

Sheriffs, to return jury and other process to such courts
K. & R. v. 1.
379, sec. 4.

IV. *And be it further enacted*, That the sheriffs and other officers to whom the return of any writs, juries or certificates shall appertain, shall cause the same to come before the said circuit courts or sittings, as the case may require, to be held in their respective counties together with the panels, attachments, re-attachments, summons, re-summons, and all other minuments whatsoever any ways concerning the same in all things according to law: *Provided always*, That the attachments, re-attachments, summons and re-summons thereof shall be made at least fifteen days before the holding of the said courts.

Proviso.

V. *And be it further enacted*, That all issues upon legality of marriage, and upon pleas or allegations of general or special bastardy, shall be tried by the country and not otherwise.

Issues concerning marriage and bastardy triable by jury.
K. & R. v. 1.
376, § 5.
28 Ed. 3, st. 2.
Bills of Exceptions when and how to be taken.
K. & R. v. 1.
376, § 6.
St. Westm. 2.
13 Ed. 1. c. 31
3 John. Rep. 23
6 John. Rep.
270.

VI. *And be it further enacted*, That when any one, who is or shall be impleaded before any judges or justices, doth allege an exception, praying that the justices will allow it and they will not allow it, if he who alleged the exception do write the same exception, and require that the justices will put their seals to it for a witness, the justices shall do so: and if one will not another of the justices shall: and if a writ be brought to reverse the judgment in such case, and the same exception be not found in the roll, and the plaintiff shew the exception written with the seals of the justices put to it, the justice or justices who sealed the same shall be commanded to appear at a certain day, either to confess or deny his or their seal; and if the justices cannot deny the same, the court shall proceed to judgment according to the same exception as it ought to be allowed or disallowed.

1. Caines's Rep. 501
2. Caines's Rep. 168, 373.
3 John. Rep. 496.
9 John. Rep. 345.
3 John. ca. 118
2 Inst. 447 (3)
2 Caines's Rep. 373.
Venire to be awarded de corpore constitutus.
K. & R. v. 1.
376, § 7.
4 & 5. An. c. 16
24 Geo. 2. c. 18.
Postea by whom and how to be made and returned.
K. & R. v. 1.
377, § 8.
1 Caines's Rep. 406

VII. *And be it further enacted*, That every venire facias for the trial of any issue in any action civil or criminal in any court of record within this state, shall be awarded of the body of the proper county where such issue is triable, except in cases where foreign juries shall be deemed necessary, in which cases the venire facias shall be awarded of the body of the county from which such foreign jury shall be directed to come.

VIII. *And be it further enacted*, That the attorney for the party to whom the postea on the return thereof ought in the first instance to be delivered shall make up and return the same, and to that end the clerk forthwith after the trial or other proceedings shall have been finally had at the circuit court or sittings, shall deliver the record to the attorney of such party, and annex thereto a

certified copy of the minutes of the court, containing such trial or other proceedings; and if there shall be a special verdict or demurrer to evidence, then he shall also deliver all such writings as may have been read in evidence on the trial, and which ought to be put on the record: *Provided nevertheless*, That where there shall be a special verdict, copies only of such original writings as may have been read in evidence on the part of the defendant, shall be delivered to the attorney for the plaintiff.

IX. *And be it further enacted*, That it shall not be lawful for more than thirty-six, nor less than twenty-four jurors to be summoned for the trial of issues in the supreme court, or in any circuit court, sittings, court of oyer and terminer and gaol delivery, mayors' court, court of common pleas or general sessions of the peace to be held in any city or county of this state, unless otherwise directed by one of the judges of such court; and that all jurors who shall be returned upon trials of issues in the said courts other than strangers, upon trials *per medietatem lingue* shall every of them be above the age of twenty-one, and under the age of sixty years, and shall each of them have in such county in his own name or right, or in trust for him, or in his wife's right in the same county, a freehold in lands, messuages or tenements, or of rents in fee or for life, of the value of one hundred and fifty dollars free of all reprises, debts, demands, or incumbrances whatsoever, and in the cities of New-York, Albany or Hudson, a freehold of the value aforesaid, or a personal estate of the like value, free from all reprises, debts, demands, or incumbrances whatsoever. And if any man not so qualified, shall be returned upon any such jury, or *tales* in default of such jurors, it shall be good cause of challenge to the juror not so qualified; and such person so returned, shall be discharged upon such challenge, or his own allegation and oath thereof; and to the end that jurors so qualified may be always returned, the writs of *venire facias* *juratores*, which shall at any time hereafter be awarded for the impannelling of juries within any of the counties of this state, except the county of New-York, shall have in the body thereof, the words following, that is to say: "Twelve free and lawful men of your county, each of whom shall have in his own name or right, or in trust for him, or in his wife's right, a freehold in lands, messuages or tenements, or of rents, in fee or for life, of the value of one hundred and fifty dollars, free from all reprises, debts, demands, or incumbrances whatsoever;" and in the city and county of New-York, the words following, that is to say: "Twelve free and lawful men of your city and county, each of whom shall have in his own name or right, or in trust for him, or in his wife's right, a freehold in lands, messuages or tenements, or a personal estate of the value of one hundred and fifty dollars, free of all reprises, debts, demands, or incumbrances whatsoever;" and in the cities of Albany and Hudson, for trials in the respective mayor's courts, the words following, that is to say: "Twelve free and lawful men of your city, each of whom shall have in his own name, or right, or in trust for him, or in his wife's right, a freehold in lands, messuages or tenements, or a personal estate of the value of one hundred and fifty dollars, free of all

Proviso.

Number and qualifications of jurors to be summoned.
K. & R. v. l.
377 sec. 9.
27 El. c. 6.
13 Ed. 1. c. 38.
21 Ed. 1. st. 1.
2 H. 5. st. 2. c. 3.
1 R. 3. c. 4.
11 H. 7. c. 21.
4 H. 8. c. 3.
5 H. 8. c. 5.
19 H. 7. c. 12.
23 H. 8. c. 23.
16 & 17 Car. 2. c. 3.
4 & 5 W. & M. 21.
8 Geo. 2. c. 22.
4 Geo. 2. c. 7.
Qualifications.
6 John. Rep. 332.
9 Ibid. 360.
2 Ibid. 194.
4 Ibid. 296.
8 Ibid. 445.

Jurors may be sworn touching their qualifications.

Words to be inserted in the *venire facias* (except as to New-York.)

And in New-York.

And in the mayors courts of Albany and Hudson.

reprises, debts, demands or incumbrances whatsoever ;” and the residue of the said respective writs shall be in the usual form.

X. *And be it further enacted*, That at the same time that notice of trial shall be given to the opposite party, the like notice in writing, together with a note of the issue, shall be served on the clerk of the court in which such issue is to be tried.

XI. *And be it further enacted*, That before the coming or holding of any court of record, the mayors courts of the cities of Albany and Hudson excepted, in any of the counties of this state, except the city and county of New-York, the names of the jurors for the trial of issues therein shall be drawn openly and publicly, without any venire previously issued, or application from the sheriff for that purpose, on a day certain, at least fourteen days previous to the holding of the said courts respectively ; and that the clerks of the said respective courts shall give public notice of the time and place of such drawing by an advertisement for that purpose, to be put up and affixed to the outward door of the court-house, or other houses where the said courts in and for the said counties respectively, are usually held for the space of not less than ten days previous to such drawing ; to the end, that all who may be so inclined, may have an opportunity of attending the same : and at the time and place specified in the aforesaid notice, the clerks of the said respective courts shall proceed to draw out of the box by him provided for that purpose, and containing on slips of paper the names of the jurors of his city or county, with their places of abode, and additions, as the same shall have been duly certified and transmitted to him, as many of the said slips of paper as there are jurors to be summoned to attend such court, and the names contained on such slips of paper shall be the persons who are to be summoned to serve as jurors at the then next court, unless any of them shall be dead, or shall have changed their place of residence to any other city or county, or be absent from the city or county, or not qualified, within the knowledge of such sheriff, officer or clerk, to serve as jurors, and if the persons named on any of the said slips of paper so drawn, shall be dead, removed, or not qualified as aforesaid, within the knowledge of such sheriff, officer or clerk, then the said clerk shall immediately destroy such slips of paper and proceed to draw out of the said box until the panel shall be completed ; and the said slips of paper, containing the names of the jurors named in the said panel, shall, by the said clerk, be put together, and carefully be kept locked up in some safe place until after the end of the term or sessions of the court at which such jurors are to appear ; and the clerk of the said court shall immediately make out and certify under his hand a panel of the names of such jurors so drawn out, with their respective places of abode, and additions, and deliver the same to such sheriff or officer, whose duty it shall be to summon the several persons whose names are contained in such panel, at least eight days previous to the sitting of any such court, and to make return in what manner he has served such process ; and the clerk of such court shall, as soon as may be, after the end of the term or session of the court, at which such jurors were to appear, put such of the

Notice of trial and note of issue to be served on the clerk.
1 K.&R. v. 1.
378. § 10.
1 Caimes' Rep. 6.
Clerk to draw the names of jurors, and when and how K.&R. v. 1.
378. sec. 11.
W. v. 3. 487.
Sess. 27.ch.33.
W. v. 3. 253.
Sess. 30.ch.32.
Notice thereof how and when given.

And the clerks accordingly shall draw them.
K.&R. v. 1.
378
Sess. 24.ch.33.
sec. 11.

If any juror be dead, etc. his ballot to be destroyed.

Ballots drawn to be kept together.

A panel of jurors drawn to be delivered to the sheriff.

Sheriff's duty thereupon.

Clerk's further duty.

slips of paper, containing the names of the jurors who appeared at such court, and were not excused from serving or discharged into another box to be by him provided and kept for that purpose, and such clerk shall destroy such slips of paper containing the names of any jurors as appeared at such court, and were adjudged not to be qualified, or were privileged or exempted from serving on juries, and such clerk shall return to the box from which they were drawn, such slips of paper, containing the names of the jurors who made default in appearing, or were excused from serving; and the said clerk shall proceed in like manner to draw out of the said box until all the said slips of paper shall be drawn out of such first box, and after the slips of paper are all drawn out of the first box, the said clerk shall proceed in like manner to draw the names of the jurors out of the other box, returning the slips of paper containing the names of the jurors so drawn, into the first box, and proceed in like manner as often as occasion shall require.

3 Geo. 2c 28

XII. *And be it further enacted*, That the clerk of the supreme court at the city of New-York, and the clerk of the circuit court and sittings, and of the courts of oyer and terminer and gaol delivery, within the said city of New-York, shall, within one week after the end of each of the said courts, within the said city, make and deliver to the town clerk of the said city, a list of all the jurors who shall have appeared in such courts, of which they are respectively clerks; and also a list of all such as made default, and of such as were excused, and of such as were discharged by reason of their being privileged or not qualified, and the clerk of the supreme court at the city of Albany, shall, in the like time and manner make and deliver to the clerk of the county of Albany, a list of all the jurors who shall have appeared in the said supreme court, or in the sittings or circuit court in the said city of Albany, and a like list of all such as made default, and were excused and discharged as aforesaid.

Clerk of supreme court at New-York, of circuit &c. to return the names of attending and delinquent jurors to the clerk of New-York. K&H. v. 1.379 sec 13

The like duty required of the clerk at Albany.

XIII. *And be it further enacted*, That the cities of Albany, Hudson and Schenectady shall be considered as towns for all the purposes intended by this act, and the mayor, aldermen and commonalty of the city of New-York in common council convened, and the supervisors and assessors of the said cities of Albany, Hudson and Schenectady; and the supervisor, town clerk and assessors of the several towns shall annually on or before the first day of July, cause to be made and transmitted to the clerk of the county, an alphabetical list of the names, with the places of abode, and addition of all persons residing in their respective cities and towns, and qualified and of sufficient ability and understanding to serve on juries in the several courts before mentioned, and not contained in either of the boxes kept by the said clerk for that purpose, who shall thereupon cause such names with the places of abode and additions, to be written on separate slips of paper and put into the box out of which the names of the jurors are next to be drawn as aforesaid; and it is hereby made the duty of each of the town clerks in the several towns in the respective counties, to transmit to the clerk of the county annually on or before the said first day of July, another and a like

Albany, Hudson and Schenectady, considered towns under this act 2 K&H. v. 1.379 380. sec 13 Names of persons qualified to serve as jurors, how to be returned in N. York, Albany, Hudson and Schenectady, and also in the towns Secs 32. ch 198 sec 1

Duty of the clerks Secs 34. c 98-§ 13 37. El. c 7 50. El. c 18 Duty of town clerks Secs 32. c 198 sec. 1 W. v. J. 569

list of the names of all such persons who had before been returned as able and sufficient jurors, but have since died, removed out of the county or become otherwise disqualified, and the said clerk shall thereupon destroy the several slips of paper containing such names.

Court may
award a *talce*
for default of
jurors
K&R. v 1
380. sec 14

35 H. 8. c 6
46 s. Ph & M
c 7
5 El. c 25
14 El. c 9
780. W.J.e 32

XIV. *And be it further enacted*, That if a sufficient number of jurors do not appear at any of the courts mentioned in this act, or after appearance of a full jury, by challenge the jury is like to remain untaken for default of jurors, such court is hereby authorised, upon motion made in behalf of the people of this state, or of any party, to command the sheriff to name and appoint as often as shall be requisite, so many of such other persons of the said county qualified to serve on such juries according to the intent of this act, and to add and annex their names to the former panel as shall make up a full jury of twelve men for the trial of every such issue; and the said courts shall proceed to the trial of every such issue with those jurors that were before impanelled and returned, and with those newly added and annexed to the said former panel by virtue of this act, in such wise as they might or ought to have done, if all the said jurors had been returned upon the first panel.

Clerks fees,
what, and how
audited and
paid
K&R. v 1.380
sec 15
Panel of jurors
to be annexed
to each writ
3 Geo. 2 c 25
sec 8

XV. *And be it further enacted*, That the fees of the clerks of the respective counties for drawing every such jury and making the panel, shall be paid to them by the sheriff or other officer at whose request it shall be done, and the sheriff or other officer shall be allowed for the same in his account against the people of this state; and that the sheriff or other officer to whom any writ or process shall be directed for the trial of issues in the said respective courts, except in cases of special juries shall annex a panel of the same jurors with their places of abode and additions to all the said writs or process returnable at the same court.

Sheriff to furnish a panel
so any person
requiring it
K&R. v 1.380
sec 16
42 Ed. 3 c. 11

XVI. *And be it further enacted*, That it shall be the duty of every sheriff or other officer to furnish any person applying, with a copy of the panel of the jurors to serve on the trial of issues in any of the said courts.

Substance of
the *habeas cor-*
pora jurato-
rum or *dis-*
tringas
K&R. v 1.
381. sec 17

XVII. *And be it further enacted*, That the names of all the persons contained in the panel annexed to the writ of *venire facias juratores*, need not be inserted in the writs of *habeas corpora juratorum* or *distringas*, subsequent to such writ of *venire facias juratores*; but it shall be sufficient to insert in the mandatory parts of such writs of *habeas corpora juratorum*, "the bodies of the several persons named in the panel to this writ annexed," and in the mandatory parts of such writs of *distringas*, "the several persons named in the panel to this writ annexed," or words of the like import, and to annex to such writs respectively, panels containing the same names, places of abode and additions as were returned in the panels to such *venire facias juratores*.

Fines on ju-
rors for non-
attendance
K&R. v 1.381
sec. 18

XVIII. *And be it further enacted*, That every grand or petit juror, constable or other officer, whose duty it shall be to attend any of the courts of record in this state, and who shall refuse or neglect to attend accordingly, shall be liable to be fined by such court in a sum not exceeding twenty-five dollars; and in every case where such fine shall be imposed by any of the said courts,

such court shall immediately cause public proclamation of such fine to be made, and if such delinquent juror, constable or other officer who shall be fined as aforesaid, shall not during the term or sittings of the said court in which such fine shall be imposed, shew a satisfactory reason or excuse to the said court for his default or non-attendance, then such fine so imposed shall be es-
How collected
465. W. & M.
c. 34. § 15
 treated into the court of exchequer, in order that the same may be levied and paid into the treasury for the use of the people of this state.

XIX. *And be it further enacted,* That in all cases where the sheriff or other officer shall not be able to summon personally any person directed to be summoned as a juror, by reason of absence from home, a summons in writing left at the usual place of abode of such person within the time prescribed for that purpose with some person of suitable age and discretion, shall be deemed a sufficient notification; and that in all cases of a summons of a juror in writing as aforesaid, the court shall suspend the imposing a fine for his non-attendance until the next term or session of such court, to the end that such juror may have time to make it appear to such court that he was absent from home at the time such summons was left at his place of abode, and did not return in season to attend at the said court, and to the end that such defaulting jurors may have such notice, the clerks of the several counties shall forthwith transmit to the sheriff of the county a list of the names of such defaulting jurors, who shall, without delay notify such jurors of their respective defaults and liability to a fine on that account.
Jurors how to be summoned
K. & R. v. 1. 381
see 19
748. W. 3. c. 33. sec 5
Fines suspended in certain cases

XX. *And be it further enacted,* That upon all trials in any of the courts aforesaid, except by struck juries or where views shall have been had, the name of every person who shall be summoned and impanelled as a juror, upon such trial, with his place of abode and addition shall be written on several and distinct pieces of paper or parchment, being all as near as may be of equal size, and shall be delivered unto the clerk of the court in which such trial is to be had, by the sheriff or other officer who shall have returned such jury, or his deputy or agent, and shall by direction and care of such clerk, be rolled up all as near as may be, in one and the same manner, and put together into a box to be by each respective sheriff provided for that purpose; and when any issue for the trial whereof they are returned as jurors shall be brought on to be tried, the clerk of the court or some other indifferent person, by direction of the court shall, in open court, draw out twelve of the said papers or parchments one after another, and if any person whose name shall be so drawn, shall not appear or be challenged and set aside, then such further number thereof shall be drawn as shall make up the number twelve, who do appear after all causes of challenge allowed, as fair and indifferent; and the said twelve men so first drawn and appearing and approved as indifferent, shall be sworn and be the jury to try such cause or issue, and their names shall be marked in the panel, and the names of the men so drawn and sworn shall be kept apart by themselves, in some other box to be provided as aforesaid, and kept for that purpose until such jury shall have given in their ver-
How jurors are to be drawn on trials
K. & R. v. 1. 387. sec 20
3 Geo. 2. c. 25
[As to challenges, verdicts, &c generally
1. John. Rep. 65, 66, 141, 316
2 Ibid 194
3 Ibid 252
4 Ibid. 139
5 Ibid. 445
9 Ibid. 160

4 Ibid 457
6 Ibid 68
2 John. ca. 375
301
3 Calver's Rep
67, 96]

dict and the same is recorded, or until such jury shall, by consent of the parties or leave of the court, be discharged, and then the said names shall be rolled up again and returned to the former box, there to be kept with the other names remaining at that time undrawn, and so it shall be done as often as any issue remains to be tried; but the names of such as shall at any time be drawn and shall not appear, or be challenged and set aside, shall immediately after the jury in such case be sworn, be rolled up again and returned to the same box with the names at that time undrawn, and if any issue shall be brought on to be tried in any of the said courts before the jury in any other cause, shall have brought in their verdict or be discharged, it shall be lawful for the court to order a jury to be drawn in manner aforesaid out of the names then remaining in the said first mentioned box for the trial of such issue which shall be so brought on to be tried.

A view, when
and how to
be granted.
K. R. v 1
383 21
St. Westm. 2
13 Ed 1 c. 48
Stat. de viac.
de incert.
Temp. K. c.
St. sm.
2 13 Ed. 1
c. 48
4 Ann. c. 16
48
3 Geo. 3 c. 25
§ 14
1 John. ca.
237. 33. 395
Special writs
to issue.

XXI. And be it further enacted, That in any action in the supreme court, or in any of the courts of common pleas or mayor's courts in either of the cities or counties of this state, where it shall appear to the court in which such action may be depending, that it will be proper and necessary that the jurors who are to try the issues in any such actions should have a view of the messuages lands or place in question in order to their better understanding the evidence that will be given upon the trials of such issues, in every such case the said respective courts in which such actions shall be depending, may order special writs of *distringas* or *habeas corpora juratorum*, to issue by which the sheriff or other officer to whom the said writ shall be directed, shall be commanded to have six out of the first twelve of the jurors named in the panel annexed to such writ or some greater number of them at the place in question, some convenient time before the trial, who then and there shall have the matters in question shown to them by two persons in the said writs named, to be appointed by the court; and the sheriff or other officer who is to execute the said writs, shall by a special return upon the same certify that the view was had according to the command of the said writs; and in such case, if there is not a struck jury and the parties or their agents or attorneys shall not mutually agree by writing under their hands on the jurors who are to have the view, the names of all the jurors returned for the trial of such cause, with their places of abode and additions shall be written on several and distinct pieces of paper or parchment and rolled up and put into a box as aforesaid, in the presence and by the direction of one of the judges of the court in which such cause shall be depending, and then the names of so many of them as shall be necessary to go upon the view, but not less than six, shall be drawn out in the presence of such judge, and the names of the jurors so mutually agreed upon or balloted as aforesaid, with their places of abode and additions, shall be first written on the panel to be annexed to such writs of *habeas corpora juratorum* or *distringas*, and the names of the residue of the jurors returned for the trial of such cause, with their places of abode and additions, shall be written on such panel immediately following the names of the jurors so agreed upon or balloted for the view in the same order they may stand in the panel

Made of ap-
pointing jur-
ors to have
the view.

annexed to the *venire facias*; and when such cause is brought on to be tried, and in all other cases where a view shall be had by virtue of any writ original or judicial, such of the jurors as shall have had the view and do appear, shall be first sworn upon the jury to try the same before any drawing, and then so many more shall be drawn as aforesaid to be added to the viewers who appear, as shall after all defaults and challenges allowed make up the number twelve.

Jurors having had the view first to be sworn.

XXII. *And be it further enacted*, That no struck jury shall be allowed, unless on the order of the court, when they may deem it necessary by reason of the importance or intricacy of the case, and whenever they shall so deem it necessary, it shall be lawful for the supreme court or the court of common pleas or mayor's court in which the cause is depending, to order the clerk of the county to return into the office of the clerk of the said court, or if the clerk of the county be the clerk of the said court, then to have ready in his office at a certain day a book containing the names of the several persons in his county qualified to serve as jurors on such trial, with their places of abode and additions, and after the return of such book, the party applying for such struck jury shall give due notice to the opposite party and to the clerk of the said court, or his deputy, of the time and place of striking such jury, at which time and place the clerk of the said court or his deputy shall attend with the said book, and shall in the presence of the parties or such of them as shall attend for that purpose, copy out of the said book the names of forty-eight such persons with their places of abode and additions as he shall think most indifferent between the parties and best qualified to try such cause; and then the party applying for such struck jury, or his agent or attorney, shall first strike out one of the said names, and then the opposite party or his agent or attorney, another and so alternately until each shall have struck out twelve; but if such opposite party shall not attend such striking, nor any person in his behalf, then the said clerk or his deputy shall strike for the party not attending; and when each have struck out twelve as aforesaid, the remaining twenty-four shall be the jury to be returned to try the said cause. And the clerk of the said court or his deputy shall thereupon make a fair copy of the names of the said remaining twenty-four persons, with their places of abode and additions, and certify the same under his hand to be the list of jurors struck as aforesaid for the trial of such cause or issue; which list shall be delivered to the sheriff or other officer, who ought to summon such jury together with the *venire facias*—and such sheriff or other officer shall thereupon annex the same list to such *venire* and return the same as the panel of the jury to try such cause and summon them according to the command of the same writ; and upon the trial of such cause there shall be no balloting, but the jurors so struck shall be called as they stand upon the panel, and the first twelve of them who shall appear and are not challenged or shall be found duly qualified and indifferent, shall be the jury and be sworn to try the said cause; but the party who shall apply for such struck jury shall pay the fees for striking thereof, and shall not have any allowance for the same upon

Struck jury, when may be ordered and how struck. K & H. v 1 3:4:2
3-Geo. 2. c. 25.
6 Geo. : c 37
24 Geo 2 c 18
1 Caines' Rep. 498
2 Caines' Rep. 28, 380
3 Caines' Rep. 127
1 John. Rep. 61, 141, 313, 314
2 John. Rep. 211, 373
4 J. hn. Rep. 186, 483 491

Provide.

the taxation of costs. *Provided always*, That if the clerk of such court shall be interested in the cause or related to either of the parties, or if it shall appear probable to the court that he is not indifferent between them, then and in every such case the court shall nominate two proper persons who are indifferent between the parties, to strike the jury, which persons shall do and perform every thing required to be done by such clerk relating to the striking of such jury.

Fees of struck jurors how and by whom paid.
K. & R. v. 1. 385.
§ 23.
3 Geo. 2. c. 25.
24 Geo. 2. c. 18.

In what cases one half of the jury to be chosen.
K. & R. v. 1.
385 § 24.
27 Ed. 3. st. 2.
c. 2.
28 Ed. 3. c. 13.
§ 2.
2 H. 6 c. 79.
2 John. Rep. 381.

Challenges on behalf of the state how tried.
K. & R. v. 1. 385.
§ 25.
33, Ed. 1. st. 4.
2 Hawk. P. C. 413.
2 Hal. P. C. 277.
4 Bl. Com. 353.
1 Caines's Rep. 37.
Provide.

Jurors taking any thing to give their verdict, forfeit ten times as much.
K. & R. v. 1.
385. § 26.
8 Ed. 3. c. 10.
34 Ed. 3. c. 8.
28 Ed. 3. st. 1.
c. 13.
Embracers punished in like manner.
2 Hawk. P. C. 395.
4 Bl. Com. 140.

XXIII. *And be it further enacted*, That struck jurors shall be paid by the party at whose request such jury shall be struck, or his attorney, and it shall be lawful for every such juror to bring and maintain his suit for the recovery thereof, either against such party or his attorney in the cause.

XXIV. *And be it further enacted*, That all manner of juries and inquests hereafter to be taken between aliens and citizens of any of the United States of America, in any of the said courts, and whether this state be party, or interested or not, except in cases of treason, the one half of the jury or inquest shall be citizens of this state, and qualified by this act to serve on such juries or inquests, and the other half aliens if so many aliens be in the city or county where such jury or inquest is to be taken, and who shall be indifferent between the parties; and if there be not so many aliens or strangers, then there shall be put on such juries or inquests as many aliens and strangers as shall be found in the same city or county, who shall be indifferent as aforesaid, and the remainder of the citizens of this state, qualified by this act to serve on such juries or inquests.

XXV. *And be it further enacted*, That in all cases where the attorney-general in behalf of this state, or he who shall in any case prosecute for the people of this state, shall challenge any juror as not indifferent or for any other cause, he shall immediately assign and shew the cause of such challenge, and the truth thereof shall be inquired of and tried in the same manner as the challenges of other parties ought by law to be enquired of and tried: *Provided*, That nothing in this act contained shall be construed to take away the right of peremptory challenges in any cases where the same are now allowed by law.

XXVI. *And be it further enacted*, That if any of the jurors sworn for the trial of any issues or other inquests to be taken between the people of the state of New-York and any party, or between party and party, shall take any thing to give their verdict, and thereof be found guilty in any court of record, either at the suit of any party or any other person that will sue for himself or for himself and the people of the state of New-York, every of the said jurors shall pay ten times as much as he hath taken, with the costs of suit, and he that will sue shall have the one half and the people of the state of New-York the other half; and that all embracers that procure such jurors and inquests to take gain or profit, shall be punished in the same manner and form as the jurors; and if the party to the plea shall bring any such suit or action, and shall recover therein, he shall also recover his damages by the assessment of the inquest; and if the juror or embracer

so found guilty shall not have whereof to make satisfaction in the manner aforesaid, he shall be imprisoned for one year.

XXVII. *And be it further enacted*, That no jury, upon any trial hereafter to be had, shall in any case be compelled to give a general verdict so that they find a special verdict and shew the truth of the fact, and require the aid of the court or justices.

Jurors not compelled to give a general verdict.
K. & R. v. 1. 386. § 27.
Westm. 2. 13.
Ed. 1. c. 30.
Persons exempted from serving as jurors.
K. & R. v. 1. 386. § 28.

XXVIII. *And be it further enacted*, That any non-commissioned officer or private of any company of grenadiers, light infantry, artillery and riflemen of the militia of this state, and the commissioned officers of artillery in the city of New-York, who shall produce a certificate, dated within three months of the then present time, signed by the commanding officer of such company or regiment that he belongs to such company, shall not be compelled to serve on any grand or petit jury within this state; nor shall the firemen belonging to any company of firemen now or hereafter to be established by law in any city, town or village within this state; or the inspectors of the state prison, or the wardens of the port of New-York, or the commissioners of the health office, be compelled to serve on any grand or petit jury, so long as they continue to be firemen, inspectors, wardens or commissioners as aforesaid; and also the agents, superintendents, artificers and workmen of every kind employed in and about the Albany glass factory belonging to the Hamilton glass manufacturing society, shall be exempted from serving as jurors during the time they shall be so employed. *And further*, That no quaker, or reputed quaker, shall be compelled to serve as a juror upon the trial of any indictment for treason or murder.

CHAP. LXVI.—(R.L.)

*An ACT concerning the Circuit Courts and Sitzings, and the Courts of Oyer and Terminer and Gaol Delivery.**

Passed April 5th, 1813.

[Br. ed. 17, &c. also appendix.—J. & V. v. 1. 87, 303, 311.—Ibid. v. 2. 62, 249.—Gr. v. 1. 57, 261, 270, 355.—Ibid. v. 2. 81, 378.—Ibid. v. 3. 365, 464, 268, 269.—K. & R. v. 1. 172.—Sess. 25. ch. 31.—W. v. 5. 265.]

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the justices of the supreme court, or some or one of them, shall once in every year, and oftener if need be, hold a court in each of the counties of this state, for the trial of all issues joined in the supreme court, or in any other court, and brought into the supreme court to be tried, and which are triable in the respective counties; which courts shall be called the circuit courts; and that each of the said

Circuit courts to be held annually or oftener in each county.
K. & R. v. 1. 172
St. North. 22
H. 2.
M. C. c. 2.
Westm. 2. 13
Ed. 1. c. 30
27 Ed. 1. c. 4.
12 Ed. 2. c. 3.

[* By a law of Nov. 1, 1683, courts having civil as well as criminal jurisdiction, and called courts of oyer and terminer, and general gaol delivery, were directed to be held twice a year in each county. By ordinances from the governor and council May 15, 1699, and April 3, 1704, circuit courts, &c. were established. Vide Br. ed. in appendix for these ordinances at large.]

14 Ed.3.c.16
Westm. 1. 3
Ed. 1. c. 51
4 Ed. 3. c. 2
8 R. 2. c. 2
33 H.8.c.24.

courts shall be held so many days as the justices or justice holding the same shall think necessary: *Provided always*, That it shall not be the duty of the justices of the supreme court to hold circuit courts in the counties of (Sullivan) Franklin, (St. Lawrence) Chautauque, Cattaraugus, Allegany and Niagara, unless in the opinion of the said justices the same shall be necessary.

Justices of the
supreme court
to appoint the
times of hold-
ing the circuit
courts, and
may alter such
times
K&R. v.1.173
Re trences
supra.

II. *And be it further enacted*, That the justices of the supreme court shall appoint the times for holding the circuit courts, but they may nevertheless alter the same from time to time, as they shall judge most for the public convenience: *Provided*, That no alteration shall take effect until at least one term of the supreme court shall have intervened between the term when the alteration shall have been made and the time when the first circuit court shall thereafter be held: *And provided further*, That no such circuit court shall be appointed as aforesaid, to be holden in any county at the same time that any other court shall by appointment of law be holden in the same county, the city and county of New-York excepted; and that the clerks of the supreme court shall forthwith from time to time, cause every rule or order of the supreme court, appointing the times for holding the circuit courts, or for altering the same, as the case may be, to be published in at least two of the newspapers printed in the cities of New-York and Albany.

Clerk of the
supreme court
to publish
times of hold-
ing these
courts.

Circuit courts
to be held at
the court-
house in each
county.
K&R. v.1.173
§ 3
References
supra
Proviso

III. *And be it further enacted*, That the said circuit courts shall be held at the court houses of the counties in which they are respectively appointed to be held; and in case there be no court-house in such county, then at such place as the justices of the supreme court, during the term next preceding the holding of such circuit court, shall for that purpose appoint: except nevertheless, that in the cities and counties of New-York and Albany, the said circuit courts may be held at such place within the same as the said justices at the next preceding term shall direct.

Circuit courts
to try all is-
sues, &c.
K&R. v.1.172
§ 4.
[Nisi prius re-
cord amendable.
3 Caines' Rep. 147.]
27 Ed.1. st.l.c.
4—St. Ebor.12.
Ed.2.st.1.c.4.
Supra ne
court to give
judgment, &c.

IV. *And be it further enacted*, That the said justices of the supreme court and every of them as justices of the supreme court and without any other commission, shall be and hereby are authorised and required at the said circuit courts to try all such issues, and take all such inquests by default or otherwise, as are or ought to be tried or taken in the said circuit courts respectively, and to record non-suits and defaults before them; and upon the return of the proceedings in the said circuit courts into the supreme court, the said supreme court shall receive and record the same, and give judgment or make order thereupon according to law.

Sittings may
be held in
New-York
and Albany,
and how and
when.
K&R. v.1.172.
§ 5—Sess. 25.
ch. 31. § 1

V. *And be it further enacted*, That the chief justice of the supreme court, or in his absence or default, any other judge of the said court may at his discretion, by virtue of this act, and without any other commission for the purpose, in term time in the city-hall of the city of New-York, and in term time, or within twenty days after the end of any term, in the capitol at the city of Albany, on such days as the court shall appoint for the purpose, try all manner of issues joined in the said court, or brought into the said court to be tried, which by the ordinary course of law ought to be tried in the said court by jury, upon the like process and proceedings, and in like manner, and with like pow-

10 Ed. c. 12
12 Gro.1.c.31.
24 Geo.2.c.18.
§ 6.

As trials are had in the like cases at the said circuit courts in and for the city and county of New-York, or city and county of Albany, and that the clerk of the supreme court at Albany shall be considered as clerk of the said sittings in the city of Albany; and the same sittings may be continued from day to day, Sunday excepted, for as many days as the judge holding the same shall think necessary : *Provided always*, That the times of the said sittings in any term shall always be appointed in the next preceding term, and the times of the said sittings after any term shall always be appointed in the next preceding term but one.

VI. *And be it further enacted*, That the judges of the supreme court shall have power during any term of the said court, and as business may require, to appoint sittings to be held in and for the city and county of New-York, in the succeeding vacation, or any other vacation of the supreme court; and that such sittings may be held by any one or more of the judges successively, and be continued during any such vacation, by adjournment from time to time, not exceeding fourteen days by any one adjournment; and that any judge holding such sittings may at any time, and as often as may be necessary, during the continuance thereof, order the sheriff or coroners of the said city and county, as the occasion may require, to summon a new panel of jurors to attend such sittings, whose duty it shall be on the usual time of summons, to attend accordingly, and thereupon discharge the former jurors attending the same; and that all trials and proceedings had by such new jurors shall be entered in the same manner, and be as valid to all purposes as if the same were had by such former jurors, and all notices of trial given, and other proceedings prepared for the commencement of any such sittings, shall continue in force until the termination thereof, notwithstanding any such adjournment.

VII. *And be it further enacted*, That it shall be the duty of the district attorney of the district comprehending the said city, to attend the courts of oyer and terminer and gaol delivery, to be held in and for the said city, and to manage and conduct all suits and prosecutions for the people of this state therein, in the same manner as in the other counties within his district; and that it shall not be necessary for the attorney-general to attend such courts, except when required so to do by the governor of this state, or one of the judges of the supreme court.

VIII. *And be it further enacted*, That if it shall happen in any county, that one of the justices of the supreme court shall not come to the place, where the circuit court is appointed to be held by the hour of six in the afternoon of the day for holding the court, the sheriff shall then open, and shall adjourn the circuit court, and also the court of oyer and terminer and gaol delivery, which shall be to be held at the same time and place, until the hour of nine in the forenoon of the next day; and if one of the justices of the supreme court shall come to the place at any time before the hour of six in the afternoon of that day, it shall be lawful for him in respect to the circuit court, and for a quorum of the Commissioners in respect to the court of oyer and terminer and gaol delivery, or any justice thereof, to open the said courts,

Sittings in New-York Sec. 25, ch. 31, § 1
References supra
Continued.

Adjournment.

May require a new panel of jurors.

To discharge the former.

Oyer and terminer in New-York to be attended by the district attorney, &c. Sec. 25, ch. 31, sec. 3
Attorney-general need not attend, unless, &c.

If a judge of the supreme court do not attend oyer and terminer, or a circuit court, how to be adjourned.
K. & R. v. 1. 174. sec. 6
9 H. 6. & 1.

and hold the same in like manner, and to every intent, as if the said courts had respectively been duly opened on the first day, and adjourned to the next day, by the said justice, or by a quorum of the commissioners; and the proceedings on the record may be in the same form as if the said justice and the said quorum of the commissioners had been present and opened the said courts on the first day; if, however, a justice of the supreme court shall not so come on the second day, all persons bound by recognizance to appear at the court of oyer and terminer and gaol delivery, shall be adjudged to be bound by such recognizance to appear at the next court of oyer and terminer and gaol delivery, which shall be held in such county, notwithstanding such opening of the said court, and the adjournment of the same by the sheriff as above mentioned: *And further*, That whenever such case shall happen, the justices of the supreme court shall, in the next term thereafter, appoint a circuit court to be held in every such county, in the ensuing vacation.

Persons bound by recognizance, when to appear.

A new circuit to be appointed when the former fails.

Any judge, though not the one who opened the circuit or sittings, may continue it. R&R. v. 1. 174. sec. 7

IX. *And be it further enacted*, That any justice of the said supreme court, although not present at the commencement of any circuit court or sittings, may hold and continue the same in the absence of the judge who was present at the commencement of the same court; and do and execute every thing therein, as fully in every respect as if he had been present at the commencement thereof.

Clerks of counties to be clerks of circuits and oyer and terminers. R&R. v. 1. 174. sec. 8

The clerk of the circuit in New-York to be clerk of the sittings. R&R. v. 1. 174. sec. 9.

W. v. S. 265. Secs. 31. ch. 25. sec. 1.

Clerk of the oyer and terminer in New-York to be clerk of the general sessions. W. v. S. 265. Secs. 31, c. 30. sec. 1.

X. *And be it further enacted*, That the clerks of the several counties, the city and county of New-York excepted, shall be ex-officio clerks of the circuit courts and courts of oyer and terminer and gaol delivery, within their said counties respectively.

XI. *And be it further enacted*, That the clerkship of the circuit court, and of the sittings within the city and county of New-York, shall be united in, held and exercised by the same person, and that such clerk shall be appointed by the person administering the government of this state, by and with the advice and consent of the council of appointment.

XII. *And be it further enacted*, That the clerkship of the court of oyer and terminer and general gaol delivery, within the city and county of New-York, and of the court of general sessions of the peace, of the said city and county, shall be vested in, held, exercised and enjoyed by the same person, and that such clerk shall be appointed by the person administering the government of this state, by and with the advice and consent of the council of appointment, and shall have and enjoy all the rights and powers, receive and take all the emoluments, and perform all the duties of the former clerks in relation to the said courts of oyer and terminer and general gaol delivery and general sessions of the peace.

XIII. *And be it further enacted*, That in all cases where persons shall be bound over, and enter into recognizances for their appearance at either of the said courts of oyer and terminer and general gaol delivery or general sessions of the peace, and shall make default in appearing agreeably thereto, and the same shall be estreated, the account of the said clerk for his fees in such case shall be audited by the court of exchequer, and paid out of the monies arising from the forfeitures of such recognizances.

Clerk of the oyer and terminer and sessions in New-York to be paid certain fees out of the exchequer. W. v. S. 266. Secs. 31, c. 30. § 3

XIV. *And be it further enacted*, That the said court of oyer and terminer and general gaol delivery, and general sessions of the peace, shall have a seal, to be devised by the said clerk, and the description of the same, in writing, shall be deposited and recorded in the office of the secretary of this state, and remain a public record; and that all process issued by the said court shall be signed by the said clerk, and sealed with the said seal.

XV. *And be it further enacted*, That the justices of the supreme court, or either of them, together with the mayor, recorder and aldermen of the city of New-York, or any three or more of them, of whom either of the justices of the supreme court shall always be one, in and for the city and county of New-York, and together with the mayor, recorder and aldermen of the city of Albany, and the judges and assistant justices of the court of common pleas for the county of Albany, or any three or more of them, of whom either of the justices of the supreme court shall always be one, in and for the city and county of Albany, and together with the judges and assistant justices of the respective courts of common pleas of each of the other counties of this state, or any three or more of them, of whom either of the justices of the supreme court shall always be one, in and for each of the same counties respectively, shall be, and hereby are authorised and empowered, by virtue of their respective offices, and this act, without any other commission, at such times and places in each of the said cities and counties respectively as the said justices of the supreme court, or either of them, shall hold the circuit court therein, and at such other times and places in each of the said cities and counties as any three of the justices of the supreme court, or any one of them, with any two of the said persons within their respective cities and counties, shall for that purpose appoint, to enquire, by the oath of good and lawful men of the same cities and counties respectively, and by other ways and means, by whom and by which the truth of the matter may be the better known, of whatsoever treasons, felonies and other crimes and misdemeanors, and of the accessaries to them, in the same cities and counties respectively, by whom and in what manner soever done or committed, and of every circumstance concerning the same; and the said treasons, felonies and other crimes and misdemeanors, to hear and determine; and also to deliver the gaols in the same cities and counties respectively of the prisoners therein, according to law: *And further*, That the said courts shall be held and continue, with or without such circuit court, in each of the said cities and counties, for so long time as may be necessary to dispatch the business in the same.

XVI. *And be it further enacted*, That the sheriff of the city and county of New-York, and the sheriffs of each of the other counties in this state, shall cause to come before the said courts of oyer and terminer and gaol delivery to be held therein, twenty-four good and lawful men of the same city and counties respectively, to enquire for the people of the state of New-York, and the bodies of the same city and counties respectively, and to do and receive all those things which, on behalf of the people of the state of New-York, shall be then and there enjoined them; and

Seal of the
oyer and termi-
ner and gen. sess.
in N. York.
W. v. 7. 206
secs. 31. c. 37
§ 4
All process
from those
courts to be
under seal.

Courts of oyer
and terminer
when and by
whom to be
held.
K&R. v. 1. 175
§ 20

Powers of
those courts.

1 John. ca. 103
236
Coleman's ca.
34
2 Saml. 27
and n. 2
1 Caines's Rep
72
2 John. ca. 301
1 John. Rep.
65 66
3 John. Rep.
449

How long to
continue

Sheriffs to re-
turn at such
courts
K&R. v. 1. 175
§ 11
35 H. 2. c. 6.
2 Ed. 6. c. 32
43 Ed. 3. c. 11
13 Ed. 1. c. 23
11 H. 4. c. 6
Grand Jurors

also all the prisoners then being in the gaols thereof, together with their attachments, indictments, and all other minuments any ways concerning those prisoners, and likewise so many good and lawful men of the same city and counties respectively, duly qualified to serve as jurors therein, as the said courts of oyer and terminer and gaol delivery, or any justice thereof, shall from time to time direct, by whom the truth of the matter may be the better known and enquired into, and who have no affinity to those prisoners; and the said respective sheriffs shall cause to be publicly proclaimed throughout their respective counties, that all those who will prosecute against those prisoners, be then and there to prosecute against them as shall be just; and shall also give notice to all justices of the peace, coroners, bailiffs and constables, within their respective counties, that they be then and there, in their own persons, with their rolls, records, indictments and other remembrances, to do those things which to their offices in that behalf shall appertain to be done; and the said respective sheriffs and their officers, shall then and there attend in their own proper persons, to do those things which to their offices shall appertain: *And further*, That the district attorneys shall, from time to time, as soon as conveniently may be, after every circuit court shall be appointed to be held in the cities and counties of this state, within their respective districts, and at least fifteen days before the time of holding the same, issue precepts, under the seal of the supreme court, directed to the respective sheriffs of the same cities and counties for the purposes aforesaid, mentioning the day and place when and where the said courts are to be held, and commanding the said sheriffs respectively to do what is hereby required of them; and that the said precepts shall always be in the name of the people of the state of New-York, and be tested in the name of the chief justice of the said supreme court: *Provided*, That in case the office of chief justice shall be vacant, the precepts shall be tested in the name of the next senior justice of the said supreme court, and the said precepts may be tested on any day of the term preceding the vacation in which the court is to be held.

XVII. *And be it further enacted*, That it shall be lawful for the person administering the government of this state, by and with the advice and consent of the council of appointment, to grant and issue commissions of oyer and terminer and gaol delivery, or either of them, in the manner and form heretofore used, at any time hereafter, when and as often as occasions require: but the justices of the supreme court shall always be named in such commissions as the justices or commissioners, with such others as the person administering the government of this state, by and with the advice and consent of the council of appointment, may think proper, to execute the same; and no such commission shall at any time be executed, nor any proceedings thereupon had, without the presence of one or more of the justices of the supreme court.

XVIII. *And be it further enacted*, That it shall and may be lawful for the said courts of oyer and terminer, to direct their writs into all the cities and counties of this state where need

And petit jury

And to proclaim the court and notify prosecutors and officers to attend

Sheriffs and their officers to attend

District attorneys to issue precepts

The nature thereof

Tests thereof
Proving

Special commissions of oyer and terminer how and when issued
K&R. v 1. 176
§ 13

But the judges of the sup. ct. shall always be named therein
18 Ed. 1. c 20
§ R. 2. c 2
13 H. 4. c 2
42 Ed. 3. c 4
And one shall always form a part of the court when sitting

Writs from oyer and terminer may issue into any county,

shall be, to arrest and take such persons as shall be indicted before them. K&R. v 1. 177
§ 13
§ Ed. 3. c 11

XIX. And be it further enacted, That no manner of process or suit, before any justices of gaol delivery, oyer and terminer or other commissioners of the people of this state, shall in any wise be discontinued by the making and publishing of any new commission, or by altering the names of the justices of gaol delivery, and oyer and terminer or other commissioners, but that the new justices of gaol delivery, oyer and terminer and other commissioners, shall and may proceed in every behalf as the old justices and commissioners might have done if their commissions and authority had still remained. No process not
suit to be dis-
continued by
a new com-
mission.
K. & R. v 1. 177
§ 14

XX. And be it further enacted, That in all cases where any person shall be found guilty of any crime punishable with death, and be reprieved before judgment, any court of gaol delivery thereafter to be held by virtue of this act in such city or county where such person so found guilty shall remain, shall have power to give judgment of death against such person, as the same court before whom such person was found guilty might have done, if their authority had continued in full force. Courts of gaol
delivery may
give judgment
in capital cases
on convictions
before any other
court
K. & R. v 1. 177
§ 15
§ Ed. 6. c 7
§ 8

XXI. And be it further enacted, That the said courts of oyer and terminer and gaol delivery, within the respective cities and counties of this state, shall have power to try all indictments of the courts of general sessions of the peace against prisoners in gaol, which shall have been sent by the said courts of general sessions to, and received by, the said courts of oyer and terminer, and also shall have power to try such other indictments found in any court of general sessions of the peace, which may, in the opinion of the said courts of oyer and terminer, be proper to be tried in the same courts, and to deliver the gaols of those prisoners who shall be indicted before the said general sessions of the peace within the same cities and counties respectively. Oyer and ter-
may try in-
dictments
found at the
sessions
K&R. v 1. 177
§ 16
§ Ed. 3. c 3

XXII. And be it further enacted, That the minute books which may hereafter be requisite for the clerks of the courts of oyer and terminer and gaol delivery, shall be provided for the purpose at the expense of the counties respectively. Expense of
minute books
of oyer and
terminer how
paid
K&R. v 1. 177
§ 17

XXIII. And be it further enacted, That no justice of the peace shall, by virtue of his office, be liable to any penalty for not attending any court of oyer and terminer or gaol delivery, unless the duties of his office require him to attend such courts. Justices of the
peace not
compelled to
attend. &c.
K&R. v 1. 178
§ 18
§ Ed. 3. st. 2,
c 2.

CHAP. XL.—(R.L.)

An ACT dividing certain Counties into Jury Districts.

Passed March 26, 1813.

[K&R. v. 2. 190.—W. v. 3. 465—Ibid. v. 4. 159—Ibid. v. 5. 485, 352, 489—
sess. 34. ch. 246. § 27—sess. 35. ch. 173. § 6.]

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the division of the county of Tioga into two jury districts made by the court of common pleas of the said county, at its September term in the year one thou- Tioga divided
into jury dis-
tricts

Sec 35. c. 114 sand eight hundred and twelve, and entered in its minutes, be
§ 1 and is hereby confirmed.
Ed.R. v 2. 190

II. And be it further enacted; That the clerk of the said county shall provide and keep four jury boxes for the said county, and shall mark on two of said boxes, the name of one of the said districts, and on the remaining boxes the name of the other of said districts; and it shall be the duty of the said clerk to put the slips of paper containing the names of persons residing in each of the said districts, who are or shall be returned to him, in pursuance of the act, entitled "an act for regulating trials of issues, and for returning able and sufficient jurors," into one of the boxes belonging to the district in which such persons shall severally reside.

III. And be it further enacted, That jurors for the trial of issues in the circuit court, court of oyer and terminer and gaol delivery, and court of common pleas and general sessions of the peace, to be held in and for the said county of Tioga, at any time after the first Tuesday of September next, shall be taken from one of the jury boxes belonging to the district in which either of the said courts is then next to be held, in the manner directed in and by the act herein recited, and as if each of the said districts were separate and distinct counties, any thing in the said act to the contrary notwithstanding: *And further,* That it shall be the duty of the clerk of the said county of Tioga, to appoint a deputy, who shall reside within two miles of the courthouse, in the town of Spencer, in said county; but the preceding sections shall be in force five years, from the eighth day of June, one thousand eight hundred and twelve, and no longer.

IV. And be it further enacted, That the county of Washington shall be divided into two jury districts in manner following, to wit: the towns of Cambridge, Easton, Greenwich, Argyle, Salem, Hebron and Granville, shall compose the first district, and the remaining part of said county shall compose the second district: *And further,* The jurors for the trial of issues in the circuit court, oyer and terminer and gaol delivery, and common pleas and general sessions in and for said county, shall be taken in like manner in the said county as is provided for in the county of Tioga in the preceding section; and this provision shall also extend to the grand jurors summoned in and for the said county of Washington: *And further,* The clerk of the said county shall provide, mark and keep four jury boxes for said county as is provided for the county of Tioga as aforesaid, and shall put in such boxes slips of paper or ballots as is likewise declared in and for the county of Tioga: *And further,* The constables in and for the said county of Washington, shall not be obliged to attend any of the courts to be held in and for the said county out of the district in which they may respectively reside.

V. And be it further enacted, That all and singular the provisions of this act relating to the county of Tioga, shall be, and are hereby extended to the counties of Chenango and Orange respectively, and the different courts therein held, and the clerks thereof respectively: *Excepting nevertheless,* That the said provisions with regard to the said counties of Chenango and Orange,

Jurors how to
be taken from
the boxes
Sec 35. c. 114
§ 2

Deputy clerk
to be appointed
who re-
sides within
certain limits
Sec 35. c. 114
§ 3

Washington
divided into
jury districts
W. v 3. 465
sec 4

Jurors how
drawn from
the boxes
W. v 3. 465
sec 6, 7

Clerks duty as
to the boxes
W. v 3. 465
sec 8

What constables
exempt
from attending
court
W. v 3. 465
sec 9

Chenango and
Orange divided
into jury
districts
W. v 3. 159
W. v 5 352

are declared to be permanent and not to endure for five years only.

VI. *And be it further enacted*, That the inhabitants of the county of Cattaraugus, shall be and are hereby exempted for and during the term of three years from the sixteenth day of June, in the year one thousand eight hundred and twelve, from serving as jurors and constables in courts of record, or until said county contains five hundred taxable inhabitants, and is organised as a county agreeably to law; but nothing herein contained shall be construed to exempt said inhabitants from serving as jurors or constables in any court of special sessions of the peace, or in any court held by any justice of the peace for the trial of causes agreeable to law.

Inhabitants of Cattaraugus exempt from jury duty for a certain term, and from serving as constables
Sess 35 ch 173 sec 6
Except in justices courts and special sessions

VII. *And be it further enacted*, That the freeholders and inhabitants of the town of Hopkinton, in the county of St. Lawrence, by reason of the great distance of said town from the place of holding courts in said county, be and they are hereby exempted from serving as petit jurors and constables in any circuit court, or court of common pleas, or general sessions of the peace in said county for the term of four years from the ninth day of April, 1812, any law to the contrary notwithstanding.

Like exemptions extended to the inhabitants of Hopkinton, in St. Lawrence
Sess. 34, c 246 sec 27

CHAP. XCVI.—(R.L.)

An ACT concerning Costs.

Passed April 12th, 1813.

[Br. ed. 115.—V. S. v. 2. 614, 638, 639, 652, 654, 679, 768, 770.—J. & V. v. 2, 23, 24, 27, 52, 106, 437, 439.—K. & R. v. 1. 528.—W. v. 3. 461.—Ibid. v. 4. 643.—Ibid. v. 5. 116, 117, 391.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That if, any person shall sue in any court of record within this state any action, real, personal or mixed, or upon any statute for any offence or wrong immediately personal to the plaintiff, and shall recover damages in such action, then the plaintiff or demandant shall have judgment to recover costs against the defendant to be taxed, and the same shall be recovered, together with the damages, by execution against the body or estate of the defendant.

Costs given to plaintiff where he recovers damages.
K and R v 2 528 § 1
St. Glouc. 6
Ed. 1. c. 1
1 John. ca. 27
1 John Rep 343

II. *And be it further enacted*, That if any person shall sue in any court of record within this state any action wherein the plaintiff or demandant might have costs, in case judgment be given for him and he be nonsuited after appearance of the defendant, or a verdict pass against him, then the defendant shall have judgment to recover his costs against the plaintiff (except against executors and administrators prosecuting in the right of their testator or intestate) or demandant to be taxed, and the same shall be recovered against the plaintiff or demandant by like process as the plaintiff or demandant might have had against the defendant in case judgment had been given for such plaintiff or demandant.

Defendant to have costs where he succeeds
K and R v 1 528 § 2
23 H. 8. c. 15
4 Jas. 1. c. 343
13 Car. 2 at 2 c. 2 § 3
8 M. 2
2 John ca. 209
2 John. Rep. 377. in notis.
4 Ibid 190
5 Ibid 249
8 Ibid 370
3 John. ca. 73
8 or 9. W. 3 c. 11. sec. 5

When sworn-
out, etc. enti-
tled to dama-
ges and costs
K and R v 1
§ 3
7 H. S. c. 4
21 H. S. c. 19

III. *And be it further enacted*, That every person making avowry, justification or cognizance in any replevin or second deliverance, if the same be found for him or the plaintiff be non-suited, or otherwise barred, then such person shall recover his damages and costs against the plaintiff in like manner as the plaintiff would have done if the same had been found against the defendant.

Plaintiff to
pay costs if he
recover less
than 50 dolla.
43 El c 6 sec 2
23 and 23 Car
2. c. 9 sec 136
23 Geo S c 27
K & R v 1 § 23
§ 4
2 Caines' Rep
213 214
3 John. Rep.
480.
7 Ib 537 555
8 Ib 137
8 Ib 379
1 John ca 162
231—vide re
ferences to see
S of this act.
1 Caines' Rep
66
8 Ib 107
3 Ib 134
1 John ca 33
101
8 Ib 409
1 John ca 108
43 El. c. 6
23 H. S. c. 39,
§ 24
18 El. c. 5
21 Jas. 1. c 16
23 & 23 Car.
S. c. 9
8 W. S. c. 11
2 Caines' Rep
230
1 John Rep.
146, 289
8 John Rep.
185
3 John. ca 140

IV. *And be it further enacted*, That if in any personal action prosecuted in the supreme court the plaintiff shall not recover above the sum of fifty dollars, besides costs, he shall not recover any costs, but shall pay costs to the defendant to be taxed, and the defendant shall have judgment and execution for the same in like manner as if a verdict had been given for him: *And further*, That if in any personal action prosecuted in the supreme court the plaintiff shall recover a debt or sum which, exclusive of costs, shall be upwards of fifty and not exceed two hundred and fifty dollars, then the plaintiff shall be entitled to recover only, at and after the rate of common pleas costs for all the services rendered by him in such suit: *Provided always*, That in all cases where any action commenced in any mayor's court or court of common pleas shall be removed into the supreme court by the defendant, if the plaintiff recover therein any sum exceeding twenty-five dollars, besides costs, he shall recover costs in the supreme court together with the costs in the court below, including all such expenses as the plaintiff shall have been put to in the prosecution of such action. *And provided further*, That nothing in this section shall extend to any action wherein the people of this state are interested, nor to any action where freehold or title to lands or tenements shall in any wise come in question, nor to actions of replevin, or of assault and battery, or false imprisonment, or slander, nor to any action by or against the mayor, aldermen and commonalty of the cities of New-York or Albany, or the mayor, recorder, aldermen and commonalty of the city of Hudson, or the mayor, aldermen and commonalty of the city of Schenectady.

Plaintiff to
pay costs in
inferior courts
&c.
K & R v 1 § 23
References
supra.
2 Caines' Rep
214, 235
3 Caines' Rep
174
Proviso.
9 John. Rep.
224

V. *And be it further enacted*, That if any action not concerning any freehold or title of land, nor for any assault, battery or imprisonment, replevin, slander or malicious prosecution, nor by or against executors or administrators, be brought into any court of common pleas or mayor's court, and the plaintiff shall not recover above the sum of twenty-five dollars, he shall not recover any costs, but shall pay costs to the defendant to be taxed, for which the defendant shall have execution against the body or estate of the plaintiff: *Provided always*, That where the demand of the plaintiff or the accounts between the parties exceed two hundred dollars, to be certified on the record by any judge before whom the cause shall be tried, if by reason of payments or discounts, the plaintiff shall recover less than twenty-five dollars, exclusive of costs, then in such case the plaintiff shall recover his costs of suit to be taxed.

In assault and
battery and
slander,
plaintiff to re-
cover no more

VI. *And be it further enacted*, That in all actions of assault and battery and for slanderous words, to be prosecuted in the supreme court, if the jury upon the trial of the issue or upon the as-

The 2^d sec. of the fee bill - (27th. page 30) Limits the
pleas to compulsory costs, in all cases where the
sum due is under \$250 -

Also the 20th & 21. Sections of this act limits the sum
in like manner to the question, of the
amount actually due, in the cases where
stated in

assessment of damages do find or assess the damages under fifty dollars, the plaintiff shall recover no more costs than damages.

VII. *And be it further enacted*, That in all actions of trespass not provided for by the fifth section of this act, to be prosecuted in any court of common pleas or mayor's court, the plaintiff, if he recovers damages, shall be entitled to his full costs : *Provided*, The court before whom the same shall be pending, shall certify in their minutes that the trespass appeared to be wilful and malicious : *And further*, The plaintiff in any action for a nuisance, or for a false return or other mal-feasance or non-feasance, by any ministerial or judicial officer in such capacity or office, to be prosecuted in any court of common pleas or mayor's court, shall be entitled to his full costs if he shall recover any damages : *Provided*, such action be not prosecuted against any constable or marshal, touching his duties upon any civil process issued by any justice of the peace.

VIII. *And be it further enacted*, That no attorney or counsellor at law, of any court of record, shall be entitled as such to his plea of privilege before any justice of the peace or other court, for the recovery of any debt or demand against him to the amount of twenty-five dollars or under, unless it shall appear that the court wherein he shall be such attorney or counsellor, shall be then sitting.

IX. *And be it further enacted*, That in all suits upon any writ of scire facias, and suits upon prohibition, the plaintiff obtaining judgment or any award of execution after plea pleaded or demurrer joined therein, shall likewise recover his costs of suit ; and if the plaintiff shall become non-suit, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs, and have execution for the same in manner aforesaid.

X. *And be it further enacted*, That where several persons are made defendants to any action of trespass, assault, false imprisonment or ejectment, and any one or more of them shall be upon the trial thereof acquitted by verdict, every person so acquitted shall recover his costs of suit in like manner as if a verdict of acquittal had been given in favour of all the defendants, unless the judge or court before whom such cause shall be tried, shall immediately after the trial thereof, in open court, certify upon the record or in the minutes of the court, that there was a reasonable cause for the making such person a defendant to such action.

XI. *And be it further enacted*, That where any person shall sue out of any court any process against any person who shall be imprisoned on the same, or upon the return of the process shall put in bail or cause his appearance to be entered as the case may require, then if the plaintiff shall not before the end of the next term after the return of the process, or after such bail put in or appearance entered, put into court his declaration against the defendant, or if after declaration put in he shall suffer the suit to be discontinued, or otherwise shall be non-suited in the same, then and in every such case, the court may at its discretion, adjudge costs to the defendant to be taxed against the plaintiff, and for which the defendant may have execution as aforesaid, and for that purpose the defendant shall be entitled to make up and file

costs than damages, &c.
W. v. 5. 117
Sess. 30, c. 107
§ 5
31 Jac. 1. c. 10
§ 6
23 K. 23 Car. 2.
c. 9. § 136
8 W. 3 c. 11
In actions of trespass, &c. in inferior courts plaintiff entitled to full costs.
W. v. 3 461
Sess. 27. c. 69
29 & 23 Car. 2 c. 9
8 W. 3 c. 11
3 John. ca. 140
6 John. Rep. 277

Attorneys, counsellors, &c.
Sess. 28. c. 93
§ 6—24 Geo 2 c. 42. § 1
6 John Rep: 320—8 John. Rep. 123

In scire facias and prohibition, costs allowed in certain cases.
K. and R. v. 1. 530 § 9
8 W. 3. c. 11 § 3

If one, of several defendants, succeeds, he shall recover costs.
K&R. v. 1. 530 § 10
8 W. 3 c. 11

Defendant entitled to costs for want of a declaration, or upon discontinuance or non-suit.
K&R. v. 1. 530 sec. 11
13 Car. 2 st. 2 c. 3 sec. 3
8 El. c. 2
4 Jac. 1 c. 3
1 John Rep. 143—3 John. Rep. 294
6 John. Rep. 333
And may make up his record accordingly.

his judgment record or record of discontinuance or non-suit, as the case may be.

Costs against plaintiff in error, and upon demurrer.
2 K&R. v 1
430, sec. 18
9 John. Rep.
294—9 W. 2.
c 21

XII. *And be it further enacted*, That if any person shall prosecute in any court of record, any action wherein upon any demurrer by either party to the action, judgment shall be given against the plaintiff or demandant, or if at any time after such judgment the plaintiff or demandant shall sue any writ of error on the judgment, and the said judgment shall be affirmed, or the writ of error shall be discontinued, or the plaintiff non-suited therein, the defendant in such action of writ of error shall recover costs against the plaintiff or demandant and have execution for the same as aforesaid.

Costs and damages in error on affirmance of judgment.
K&R. v 1
430, sec. 19
9 W. 2. c 11
3 Ann. c 16
And cost allowed on reversal.
7 John. Rep.
463—1 John.
ca. 523
2 John. Rep.
533

XIII. *And be it further enacted*, That if any person bound by any judgment in any court of record shall, before execution had, sue any writ of error to reverse the judgment, and the same judgment be affirmed, or the writ of error be discontinued, or the plaintiff in error non-suited, then and in such case the defendant in error shall not only recover his costs but damages for the delay and vexation to be assessed and taxed by the discretion of the court before whom the said writ of error is returnable, and shall have execution for the same in manner aforesaid. And in case such judgment shall be reversed, then the party prosecuting such writ of error shall recover costs, to be taxed by the discretion of the court before whom the said writ of error is returnable, and such party shall have execution therefor. And in case execution be had upon the original judgment, before writ of error brought, then upon affirmance of such judgment, the party in whose favor such judgment was given shall have execution for his costs upon such writ of error.

Double costs on affirmance in error of a judgment after verdict.
K&R. v 1. 531
sec. 14—8 & 9
W. 2 c 12
sec. 2
6 John. Rep.
672.

XIV. *And be it further enacted*, That if any person shall prosecute any writ of error for reversal of any judgment given after verdict in any of the courts aforesaid, and the judgment be affirmed, then such plaintiff in error shall pay to the defendant in error his double costs, to be assessed by the court where such writ of error shall be depending for the delaying of execution.

Costs on quashing writ of error.
K. and R. v 1
430, sec. 16
3 Ann. c 16
sec. 25
Costs on dismissing bill in equity.
K&R. v. 1.
430, sec. 17
4 Ann. c 16,
sec. 23
In suits by the state to recover costs &c.
K. and R. v 1
430, sec. 17
33 H 5 c 20
sec 24
No costs against the state

XV. *And be it further enacted*, That upon quashing any writ of error for variance from the original record or other defect, the defendant in such writ shall recover against the plaintiff his costs as he would have done if the judgment had been affirmed, and to be recovered in like manner.

XVI. *And be it further enacted*, That upon the plaintiff dismissing his own bill in equity, or the defendant dismissing the same for want of prosecution, the plaintiff shall pay to the defendant full costs to be taxed.

XVII. *And be it further enacted*, That in all suits commenced upon any specialty made to the people of this state or to any person for their use, the people or other plaintiff shall recover the debt, damages and costs as any other person in the like cases.

XVIII. *And be it further enacted*, That where any action shall be prosecuted in the name of any person for any debt or sum of money due to the people of this state, and the plaintiff shall be non-suited therein, or if a verdict shall pass against the plaintiff, the defendant shall not recover any

costs against such plaintiff; but when the attorney-general shall institute separate actions in behalf of the people of this state, against several persons on one mortgage, covenant or agreement, or who claim under the same title, it shall be his duty whenever the defendant shall request it, to consent to a consolidation of such actions, and that in every such case there shall be but one taxation of costs against the defendants.

XIX. *And be it further enacted*, That nothing in this act contained shall extend to any popular action nor to any action to be prosecuted by any person in behalf of himself and the people of this state upon any penal statute, nor to any indictment, presentment, or inquisition.

XX. *And be it further enacted*, That upon judgments by confession hereafter to be entered in the supreme court by virtue of a warrant of attorney, and the condition of the obligation with the interest, or the sum actually due shall not exceed two hundred and fifty dollars, no more costs shall be recovered against the defendants, including the costs of both plaintiff's and defendant's attorney, than ten dollars; and upon every judgment by confession hereafter to be entered in any court of common pleas by virtue of a warrant of attorney, and the condition of the obligation with the interest or the sum actually due, shall not exceed twenty-five dollars, no cost shall be recovered of the defendant; but where the sum actually due exceeds twenty-five dollars, no more costs shall be recovered against the defendant, including the costs of both plaintiff's and defendant's attorney, than ten dollars.

XXI. *And be it further enacted*, That where any suit in the supreme court upon bond, bill, note or other contract for the payment of money is settled before judgment, and the sum actually due and admitted exceeds fifty dollars, and does not exceed two hundred and fifty dollars, no other or greater fees shall be demanded or received than if such suit had been prosecuted in a court of common pleas; and where the sum actually due and admitted does not exceed fifty dollars, no costs shall be demanded or received.

XXII. *And be it further enacted*, That it shall be lawful for the commissioners designated in the seventh section of the act entitled "an act concerning the commissioners of the land office and the sale of unappropriated lands," to make an allowance for the taxable costs, which any person claiming title to lands which the people of this state are bound to warrant, may now be or shall hereafter become chargeable with in any suit commenced by or against him, to recover the possession of such lands: *Provided always*, That nothing in this act contained shall be construed to authorise the allowance of such costs except it shall be made to appear to the satisfaction of the first above mentioned commissioners, that the title of the state to such lands is defective.

XXIII. *And be it further enacted*, That it shall be lawful for the comptroller to audit the taxable fees of sheriffs, clerks and witnesses in behalf of the people of this state, in any action which has been or may be prosecuted or defended by the attorney-general, and to draw his warrant on the treasurer in favor of the at-

K and R. v. 1
530, see 18
33 H. 8 c. 39
But a separate
suits by the
state may in
certain cases
be consolidated.
W. v. 4, 643,
sec 8

This act not
to extend to
suits popular
or penal, nor
to indictments
&c.
References
in supra.
K. & R. v. 1,
530, see 19
5 John. Rep.
251

On bonds and
warrants to
commit judgment in the
supreme
court, only
10 dols. costs
recoverable,
when debt
and interest
do not exceed
250 dollars.
W. v. 5, 116
Sess. 30, ch.
107, § 2.
Costs as to
com. pleas,
&c.

In suits set-
tled in the su-
preme court
for sums un-
der 250 dol-
lars, common
pleas costs
only allowed.
W. v. 5, 117
Sess. 30, ch.
107, § 3
5 John Rep
258.

When title
granted by the
state, costs al-
lowed defend-
ant if sued
for maintain-
ing it.
W. v. 5, 391,
Sess. 31, ch. 325
§ 1

Proviso.

Comptroller
to audit cer-
tain fees in
suits brought
or defended
by attorney-
general.
W. v. 5, 391
Sess. 31, ch. 325
§ 2

torney-general for the payment thereof; and that it shall be the duty of the attorney-general to pay such fees: *Provided always*, That in case any such fees shall be recovered in any such action of the opposing party, it shall be the duty of the attorney-general to collect and pay the same into the treasury.

Capital,

And whereas it is enacted by the third section of the act entitled "an act for the more easy pleading in certain suits," that in all cases where the people of this state shall be interested in the event of any suit, the same shall be defended by or under the direction of the attorney-general, at the expense of this state, and he may employ such counsel to assist in and concerning such defence, as the person administering the government of this state shall from time to time deem necessary: Therefore,

Counsel when employed by the state to be paid, W. v. s. 391. Sess. 31, ch. 215, § 3

XXIV. *Be it further enacted*, That in cases where counsel shall be employed in manner aforesaid, it shall be the duty of the person administering the government of this state, to certify the sum which will be a reasonable compensation for the services of such counsel, and that the comptroller shall thereupon draw his warrant on the treasurer for the payment thereof.

[Other cases relative to costs, 1 Caines's Rep. 55—John. ca. 104, 114, 280—1 John. Rep. 289, 343—3 John. Rep. 138, 247, 445—4 John. Rep. 311, 484,—5 John. Rep. 135—6 John. Rep. 109, 318—7 John. Rep. 374, 539—8 John. Rep. 335, 353, 256—9 John. Rep. 119, 131.]

CHAP. LXXXI.—(R.L.)

*An ACT for the Relief of Debtors with respect to the Imprisonment of their Persons.**

Passed April 9, 1813.

[J.&V. v. 408, 417.—Gr. v. 2. 231, 318, 356.—K.&R. v. 1. 290.—W. v. 5, 344, 440, 510.]

Imprisoned debtors of a certain description to the amount of 25 dolls. how relieved from imprisonment K and R. v. 1. 290. sec 1 W. v. s. 440 Sess 23 c. 10

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That every person not being a freeholder who shall be confined in gaol upon any execution or other process, or by virtue of any judgment or order of any court of justice, or by warrant from any judge or justice for any debt, sum of money, fine or forfeiture not exceeding twenty-five dollars exclusive of costs, and shall have remained in gaol for thirty days, if not detained for any other cause, shall be discharged from such imprisonment by the keeper of the gaol on application to him by the person so confined; and if any suit be brought against the sheriff or keeper of the gaol for such discharge, and the plaintiff be non-suited, or discontinue, or judgment be given for the defendant, the defendant shall have treble costs: *Provided always*, That nothing herein contained shall extend to cases of imprisonment under the act, entitled "an act for the speedy recovery of debts to the value of twenty-five dollars."

Tidd's Forms 283. et. seq. Proving

* Relief for imprisoned debtors in England, &c.—1 Ann. st. 1. c. 25—2&3. Ann. c. 16.—6 Geo. 1. c. 22.—11 Geo. 1. c. 21.—2 Geo. 2. c. 10.—21 Geo. 2. c. 31.—28 Geo. 2. c. 13.—29 Geo. 2. c. 18.—32 Geo. 2. c. 28.—33. Geo. 3. c. 21.—37. Geo. 3. c. §2.]

*This ~~is~~ not to extend to plaintiffs imprisoned
for costs - Vide 2nd. Vol. page 545-*

II. *And be it further enacted*, That no person discharged from imprisonment by virtue of this act shall, at any time thereafter be imprisoned for the same cause, and if any person so discharged shall be arrested for the same cause, it shall be lawful for any judge of the court, out of which the process upon which such person shall be arrested shall have issued, or any justice of the peace who shall have issued such process to discharge such person out of custody: *Provided*, such person do enter an appearance or give a warrant to some attorney to appear and plead to such action.

No person so discharged to be re-imprisoned for the same cause
K and R v 1
300 sec 2

Proviso.

III. *And be it further enacted*, That notwithstanding such discharge every debt and demand, judgment and decree, against the person so discharged shall remain good against the estate real and personal of such person, his arms and accoutrements excepted, and any creditor at whose suit such person was confined, his executors and administrators, and the officer who ought to prosecute for any such fine or forfeiture, may at any time after such discharge, sue out a new execution or other process for the said debt, sum, fine or forfeiture, with the costs against the estate real and personal of the person so discharged, his arms and accoutrements excepted, in the same manner and form as if such person had never been so confined for the same: And in case no judgment shall be obtained at the time of such discharge, it shall be lawful for the creditor to prosecute his action to judgment, and to prosecute any other action for the recovery of such debt or sum, and to take out such execution therefor with costs against the estate real and personal of the person so discharged, as if such person never had been confined for the same.

But his estate to remain liable
K and R v 1
300 sec 3

And a new execution may issue for the purpose

Or the suit may be prosecuted to judgment

And execution against his estate

IV. *And be it further enacted*, That if any person shall be charged in execution for any sum or sums of money, not exceeding in the whole five hundred dollars, or on which execution or executions there shall at any time remain due as shall be made to appear by oath a sum or sums of money not exceeding five hundred dollars; or if any person shall be charged in execution for any sum or sums of money above five hundred dollars, and shall have remained in gaol the space of three calendar months, and shall in either case be minded to deliver up to the creditor or creditors, who shall so charge him in execution, all his estate and effects, towards satisfaction of the debt or debts where-with he stands charged, it shall be lawful for such person in the first case at any time, and in the second case, after the expiration of the said three calendar months, to present a petition to the court from whence the process issued by which he shall be so charged, stating to the best of his knowledge and belief the cause of his imprisonment, and a just and true account of all his estate real and personal in law or equity, and of all charges affecting the same, both as the same estate existed at the time of his first imprisonment in the said action, and as it shall exist at the time of exhibiting the petition, and also a just and true account of all deeds, securities, books and writings whatsoever, relating to the same, and the names and places of abode of all the witnesses to such deeds, securities and writings: And that previous to the exhibition of such petition the prisoner shall cause

Debt's charged in execution, how relieved on their own petition
K and R v 1
290 sec 4

W. v. S. 510.
Sess. 32. c 151
2 JohnRep431
5 JohnRep115
8 JohnRep472

By presenting a petition to the ct. which issued execution

2 JohnRep289

Accompanied by an inventory of his estate

And notice to be served on

the creditor
on
2 John ss. 39
415
14 days before
petition is pre-
sented
Together with
a copy of his
inventory
5 John Rep 359

And thereup-
on the debtor
shall be
brought into
court, and up-
on hearing the
proofs, the
court shall ad-
minister an
oath to the pe-
titioner

And thereup-
on the court
may order an
assignment of
his estate

Exceptions

Effect of the
assignment

And thereup-
on the peti-
tioner shall be
discharged
from prison

Assignees du-
ly

If creditor be
not satisfied
when peti-
tioner is brought
up
2 Canine's Rep
99-3 Canine's
Rep 274
A further day
may be ap-
pointed

notice in writing to be given to the creditors by whom he shall be so charged, or to their executors or administrators, or to their attorney, fourteen days at least before such petition is presented ; which notice shall be signed by the prisoner, and shall state his intention of petitioning the court as aforesaid, and set forth a true copy of the account of his estate as aforesaid, and that upon proof of the due service of such notice, the court shall order the prisoner to be brought up upon a day to be assigned ; on which day the court shall, in a summary way, proceed to hear and examine the allegations and proofs of the parties, and if they shall deem it proper, the court shall tender to the prisoner an oath to the following effect, viz ; " I do swear that the account by me set forth in my petition presented to this honorable court is in all respects just and true, and that I have not at any time or in any manner or way whatsoever disposed of, or made over any part of my estate real or personal in law or equity with a view to the future benefit of myself or my family, or with a view to injure or defraud any of my creditors." And if the court shall be satisfied that the proceedings on the part of the prisoner are just and fair, they shall then immediately order the estate contained in such account, or so much of it as may be sufficient to satisfy the debts wherewith the prisoner stands charged as aforesaid, together with the gaol fees, his arms and accoutrements and necessary wearing apparel and bedding and the tools or instruments of his trade, not exceeding fifty dollars in value in the whole, excepted, to be by the prisoner by a short endorsement on such petition assigned to such person or persons as the court shall direct, and to his or their heirs, executors, administrators and assigns, for the benefit of the creditors who shall have so charged the prisoner in execution. And such assignment shall absolutely and completely vest in the assignee all the estate, right and interest of the prisoner ; and such assignee may sue for the recovery thereof in his own name ; and that upon the assignment being made the prisoner, by order of the court, shall be discharged from custody in the cause or causes stated in the said petition, and the sheriff or gaoler on being served with a copy of such order, shall discharge the prisoner from gaol without taking any fee or detaining him for or on account of any gaol fees ; that the assignee shall with convenient speed dispose of the estate so assigned, and divide the net produce among the creditors, if more than one, who shall have charged the prisoner in execution previous to the exhibition of his petition aforesaid, first paying the fees due to the sheriff or gaoler in whose custody he was, and returning the overplus if any there be, after the payments aforesaid, and all reasonable charges expended in or by means of getting in such estate to the prisoner : But in case the creditor shall not be satisfied with the truth of the prisoner's oath, and shall in person or by attorney (if it be made to appear to the satisfaction of the court that he cannot personally attend) desire further time to inform himself, the court shall appoint a further day for the hearing of the parties, and which day shall be as soon as conveniently may be, and not beyond the first week in the following term, and the prisoner in the mean time shall be remanded ; that at such further day

to be appointed no objection of the creditor as to matters of form shall be received, and unless the creditor shall then be able to satisfy the court that the proceedings on the part of the prisoner are not just and fair, the court shall order an assignment and discharge as aforesaid: *Provided however*, That if any person shall refuse to take the oath or to execute the assignment aforesaid, he shall be presently remanded and continue in execution.

And on that day he may be discharged
Provido.

V. *And be it further enacted*, That any prisoner now confined, or hereafter to be confined, in any gaol, in any county, by virtue of any execution or executions, issuing out of the supreme court, it shall be lawful for such prisoner to petition the court of common pleas, which shall be held in the county in the gaol of which such person shall be charged in execution as aforesaid, in like manner and form, and the same proceedings shall be had thereon, as if such prisoner had been confined by process of execution issuing out of the said court of common pleas; and every rule or order made by such court of common pleas for discharging such prisoner out of custody, shall be as valid as if the same had been made by the supreme court; and the sheriff or gaoler in whose custody such prisoner may be, is hereby required on being served with a copy of such rule or order, certified by the clerk of the court making the same, forthwith to discharge such person, in the manner herein before directed; for the doing of which, such sheriff or gaoler shall not be liable to any action, of escape, or other suit or information.

Debtors charged in execution from the supreme court, how and when relieved by the common pleas K. & R. v. L. 290 § 5.
W. v. S. 510
Sess. 32. ch. 151
The orders etc. of the common pleas of equal force with those of the supreme court.

And also the discharge.

VI. *And be it further enacted*, That if any person who shall take any oath, by this act required to be taken, shall upon any indictment for perjury, be convicted by his own confession or by verdict, every person so convicted shall suffer the pains and forfeitures which by law are to be inflicted upon any person guilty of wilful and corrupt perjury; and shall likewise, if discharged out of execution by virtue of this act, be liable to be taken on any process *de novo*, and charged in execution for the said debt in the same manner as if he had not been taken and discharged, and shall never after have the benefit of this act.

False swearing under this act declared perjury.
K. & R. v. L. 290 § 6

And execution *de novo* may issue.

VII. *And be it further enacted*, That notwithstanding any discharge obtained by virtue of this act, for the person of any such prisoner, the judgment obtained against every such prisoner shall remain in force, and execution may at any time be taken out thereon against the lands, tenements, goods and chattels of any such prisoner, other than and except the necessary wearing apparel and bedding for him and his family, and the necessary tools for the use of his trade or occupation, not exceeding fifty dollars in value in the whole, as if he had never before been charged in execution, and released out of prison by virtue of this act; and that any prisoner who shall be so discharged on such petition as aforesaid, shall be liable to be proceeded against by action for the debt on which he or she may have been imprisoned in any county of this state: *Provided always*, That such debtor shall not be holden to bail in any such action; but may endorse his appearance upon the process therein, and that execution may issue on any judgment to be obtained in any such action against

Real and personal estate of debtors always liable, etc.
K. & R. v. L. 290. § 7.
W. v. S. 344.
Sess. 31. c. 163 § 7.
6 John. Rep. 106.
7 Ibid. 116 117.
8 Ibid. 249.

Action of debt to lay on this judgment.

Provido, but no bail shall be required,

nor execution
issue against
the body.

Assignee's
further duties
and powers.
K. & R. v. L.
200 § 8, &c.

May submit
disputes to ar-
bitration.

Creditors
bound by his
acts.

Assignees may
be removed,
and how.
K. & R. v. L.
200 § 9.

And other
disposition made
of the estate,
and how.

New assignees
may be ap-
pointed, &c.

the property ; but not against the body of such debtor, unless he shall under this act be convicted of wilful perjury.

VIII. *And be it further enacted*, That every assignee to whom by virtue of this act the estate or effects of any prisoner shall be assigned is hereby empowered to make composition with any debtor or accountant to such prisoner, where the same shall appear necessary or reasonable, and to take such part of any debt or demand, as can upon such composition be obtained in full discharge of such debt or demand, and also to submit any dispute concerning any part of such prisoner's estate or effects, or by reason of any matter relating thereto, or to such prisoner, or in respect of any debt or sum of money, or any thing claimed to be due, or belonging to such prisoner at the time of his discharge to the final end and determination of arbitrators, to be chosen by the said assignee, and the party with whom any such dispute shall be, and if such arbitrators cannot agree in the same, then to submit the same to the determination of any umpire to be chosen by them, or otherwise to settle and agree the matter in dispute between them in such manner as such assignee shall think fit and can agree ; and the same shall be binding upon all the creditors of such prisoner who shall have charged him in execution, and also upon every such prisoner ; and every such assignee is hereby indemnified for what he shall fairly, and without any fraudulent design do in the premises, according to the directions of this act.

IX. *And be it further enacted*, That it shall be lawful for the respective courts, out of which the process issued, upon which any such prisoner so discharged was committed in execution, or any judge of any such court, and for the supreme court or any judge thereof, in all cases, and at any time, on the petition of any creditor or creditors, who had charged any such prisoner in execution, or of any such prisoner to such court, or to any judge thereof, complaining of any insufficiency, fraud, mismanagement or other misbehavior, of any such assignee or assignees, to order the respective parties concerned, to attend such court on the matter of every such petition, at some certain time, in such order to be mentioned ; and every such court on hearing the parties concerned therein, is hereby authorised to make such order, and give such directions in the premises, either for the removal of such assignee or assignees, and appointing any new or other assignee or assignees, in the place of such assignee or assignees, so to be removed, or for the just or equitable management or distribution of the said estate and effects, or any part thereof, for the benefit of the respective creditors as aforesaid, of such prisoner, as such court shall think fit ; and in case of the removal of any assignee or assignees, and the appointing of any new assignee or assignees, the estate and effects of such prisoner shall from thenceforth be divested out of the assignee or assignees so removed, and be vested in and delivered over to such new assignee or assignees in the same manner, and for the like intents and purposes, as the same were vested in the former assignee or assignees.

X. *And be it further enacted*, That where mutual credit shall have been given between any prisoner who shall be discharged under this act, and any other person, bodies politic or corporate, before the delivery of any schedule or inventory of the estate and effects of such prisoner upon oath, as by this act is directed, then, and in every such case, the respective assignee or assignees of such prisoner shall have power, and they are hereby required, on his and their parts, to state an account between them, and nothing more shall be deemed to be vested by an assignment or conveyance, which shall be made by virtue of this act, as the estate or effects of such prisoner, than what shall appear to have been due, and to be justly coming to him on the balance of such account when truly stated.

Further duties and powers of the assignees, in case of mutual dealings between debtor and others.
K. & H. v. l. 290 § 10.

XI. *And be it further enacted*, That if any defendant be taken or charged in custody at the suit of any person, upon any process out of any court of record, and imprisoned or detained in prison for want of sureties for his appearance to the same, the plaintiff in such process shall before the end of the next term, after such process shall be returnable, declare against such prisoner in the court out of which the process issued, and shall cause a true copy of the declaration to be delivered to such prisoner, or to the sheriff or keeper of the gaol, in whose custody such prisoner shall be, in which declaration it shall be alleged, in custody of what sheriff or officer such prisoner shall be, by virtue of the said process, at the time of such declaration, and to which declaration the said prisoner shall appear and plead; and if any such prisoner shall not appear and plead to the same, the plaintiff shall have judgment, in such manner as if the said prisoner had appeared in such court and refused to plead.

Prisoners in custody on *meane process* to be declared against in a limited time.
K. & H. v. l. 290 sec. 11.
3 Caines' Rep. 98, 256, 257.

Form of declaring.

Judgment for want of appearing or pleading.

XII. *And be it further enacted*, That if any plaintiff shall obtain judgment in any court of record, in any action against any defendant, in custody of any sheriff or other officer, either upon the process in the same action, or upon being surrendered in discharge of the bail, or otherwise; and shall not charge such defendant so remaining a prisoner in execution, within three months next after such judgment obtained, then such defendant so remaining in prison may be discharged out of custody by a supersedeas, to be allowed by one of the judges of the court in which such judgment shall be obtained; and where any defendant shall be surrendered in discharge of his bail after judgment obtained against such defendant, and be thereupon committed to gaol; and the plaintiff shall not charge such defendant so surrendered and remaining in gaol in execution, within three months next after such surrender, such defendant remaining in prison may be discharged out of custody by a supersedeas, to be allowed as aforesaid.

Prisoner how and when superseded, etc.)
K. & H. v. l. 290. sec. 12.
1 Caines' Rep. 67, 216.
3 Ibid 267.
4 John. Rep. 32.

Supersedeas how obtained and by whom allowed.

XIII. *And be it further enacted*, That where any prisoner charged in execution for any debt or damages, shall have remained in execution for the space of three months, then any creditor at whose suit such person shall be so charged, and his executors and administrators may by notice in writing, subscribed by such creditor, require such prisoner to exhibit such account, and make such assignment as is herein before directed

Creditor charging defendant in execution may compel him to assign his estate, and how and when.
K. & H. v. l. 290 § 13.
W. v. l. 510 Sec. 32. ch. 41

And if debtor do not comply therewith, he is forever barred the benefit of this act.

and if such prisoner shall not as soon as may be, after thirty days from the time of such notice, take the steps herein before directed, in order to entitle him to a discharge by virtue of this act, such prisoner shall be forever barred from obtaining such discharge.

CHAP. LVII.—(R.L.)

An ACT to prevent Unjust Imprisonment by Securing the Benefit of the Writ of Habeas Corpus.

Passed April 5th, 1813.

[Colonial Charter of Rights, &c. of October, 26, 1683, and of April, 1691. Br. ed. 4.—J.&V. v. 2. 77, 117, 246.—Gr. v. 1. 369, 372, 374, 411.—lb. v. 2. 78.—Sess. 31. ch. 163. § 9.]

Duty of sheriff and others on receiving a writ of habeas corpus. K&R. v. 1, 286 § 1. Sess. 24. ch. 65 31 Car. c. 2 16 Car. 1 c. 10 § 6. Colonial charters of rights &c.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That when any person shall bring any writ of Habeas Corpus directed to any sheriff, gaoler or other person, or for any person in his custody, and the writ shall be served upon such officer or other person, or left at the prison with any under officer of the same, the person on whom the writ shall be so served, or with whom it shall be so left, shall, (unless the person so in custody be committed for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of charges of bringing the said prisoner, to be ascertained by the court or judge awarding the same, and endorsed on such writ, not exceeding twelve and an half cents per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if remanded, and that he will not escape by the way, make return of such writ, and cause to be brought the body of such prisoner before the chancellor or supreme court, or any judge of the same before whom such writ is returnable, according to the command thereof, and certify the true cause of his imprisonment within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where such court or person resides; and if beyond the distance of twenty and not above one hundred miles, then within the space of ten days; and if beyond the distance of one hundred miles, then within the space of twenty days after delivery of the writ as aforesaid and not longer.

Time allowed to make return.

Penalty on disobeying the writ. K&R. v. 1, 286 § 2 31 Car. 2 c. 2 sec. 5

II. *And be it further enacted,* That if any person, whose duty it is made as aforesaid, shall neglect or refuse to make the return and obey the said writ as aforesaid according to the command thereof within the respective times aforesaid, or upon demand made by the prisoner, or any one on his behalf, shall refuse to deliver to the person demanding a true copy of the warrant of commitment and detainer of such prisoner, every such person so offending shall, for the first offence, forfeit to the party grieved two hundred and fifty dollars; and for the second offence, five hundred dollars, and shall, if an officer, be incapable to hold his said office.

When and by whom writs to be granted.

III. *And be it further enacted,* That all such writs shall be signed by the person awarding the same, and endorsed with

These words—"by the statute." And if any person be imprisoned as aforesaid in vacation time, it shall be lawful for every such person (other than persons convict or in execution by legal process, or committed for treason or felony, plainly and specially expressed in the warrant of commitment) to apply in person, or by any one on his behalf, to the chancellor or any judge of the supreme court; and the chancellor or judge to whom application shall be so made shall upon view of a copy of the warrant of commitment or upon oath, that such copy is denied upon request in writing by such prisoner, or by any one on his behalf, attested and subscribed by two witnesses, allow an *habeas corpus* under the seal of the court whereof he shall be chancellor or judge, to be directed to the officer or person in whose custody such prisoner shall be, returnable immediately before such chancellor or judge; and upon service and return thereof with the prisoner, and cause of his imprisonment as aforesaid, before the chancellor or judge allowing the same; and in case of his absence, before any other of them the chancellor or judge, within two days after the party shall be so brought before him, shall discharge such prisoner on taking his recognizance, with one or more sureties, in any sum in his discretion, having regard to the quality of the prisoner and the nature of the offence, for his appearance at the next court where the offence is properly cognizable, as the case shall require, and shall then certify the said writ, with the return thereof, and such recognizance into the court where such prisoner shall be bound to appear; or, if taken in the city of New-York, into the police-office of the said city, unless it shall appear unto the said chancellor or judge that such prisoner is detained upon a legal process, out of some court having jurisdiction of criminal matters, or by some warrant under the hand and seal of a judge or justice, for some matter or offence for which by law the prisoner is not bailable: *Provided nevertheless*, That if any such prisoner shall have wilfully neglected, for two whole terms after his imprisonment, to pray a *habeas corpus* for his discharge, in such case he shall not have any *habeas corpus* to be granted in vacation time in pursuance of this act.

IV. *And be it further enacted*, That any prisoner as aforesaid may move for and obtain his *habeas corpus* as well out of the court of chancery as out of the supreme court, and if the chancellor or any judge of the supreme court in the vacation time, upon view of the copy of the warrant of commitment or detainer, or upon oath, that such copy was denied as aforesaid, shall deny to allow any writ of *habeas corpus*, by this act required to be granted, being applied for as aforesaid, he shall forfeit to the party grieved one thousand two hundred and fifty dollars.

V. *And be it further enacted*, That no person who shall be set at large by any *habeas corpus* shall be again imprisoned for the same offence, unless by the legal order or process of the court wherein he is bound by recognizance to appear or other court having jurisdiction of the cause; and if any person shall knowingly, contrary to this act, re-commit or imprison or cause to be re-committed or imprisoned for the same offence or pretended offence, any person so set at large or shall knowingly aid or assist

K. and R. v. 1,
287 § 3
1 and 2 Ph. and
M. c. 13 sec 7
2 H. 5 st. 1 c. 3

31 Car 2 c 2
1 John. ca. 136
4 John. R. p.
317—4 Ib. 283
357—6 Ib. 337
—8 Ib. 336—
9 Ib. 339

Judge to discharge on recognizance.

Unless the prisoner be not liable.

Proviso—when a prisoner loses his right to the writ in vacation.

Penalty on Chancellor or Judge for denying the writ
K. and R. v. 1
287 § 4
31 Car 2, c 2
4 John. Rep.
282—6 Ib. 337

Penalty for re-imprisoning, etc.
K. and R. v. 1
288 § 5
31 Car. 2. c. 2
4 John. Rep.
282—6 Ib. 337

therein, he shall forfeit to the party grieved one thousand two hundred and fifty dollars, any colourable pretence or variation in the warrant of commitment notwithstanding.

Prisoners
when entitled
to bail on not
being indicted
K&R. v 1, 288
§ 6
31 Car. 2. c. 2

VI. *And be it further enacted*, That if any person shall be committed for any treason or felony, plainly and specially expressed in the warrant of commitment, upon his petition, in open court the first week of the term, or first day of the sessions of the court of oyer and terminer or gaol delivery, to be tried, shall not be indicted at the term or court; after such commitment the supreme court or court of oyer and terminer or gaol delivery shall, upon motion in open court, the last day of such court, either by the prisoner or any one on his behalf, set at liberty the prisoner upon bail, unless it appear upon oath that the witnesses against the prisoner could not be produced at the same court; and if any person committed as aforesaid upon petition as aforesaid, to be brought to trial, shall not be indicted and tried the second term of the sessions or the first court of oyer and terminer or gaol delivery after his commitment, or upon his trial shall be acquitted, he shall be discharged so far as relates to any treason or felony for which he was committed as aforesaid. And if any person, indicted as aforesaid, shall not be brought to trial at the second term of the sessions or first court of oyer and terminer after his commitment, he shall be discharged, as far as relates to any treason or felony for which he was committed as aforesaid unless satisfactory cause shall be shewn by the public prosecutor for not bringing him to trial.

When entitled
to discharge
on not being
tried.

No person to
be removed,
etc.
K&R. v 1, 288
§ 7

References to
statutes *supra*

VII. *And be it further enacted*, That if any citizen of this state shall be committed to any prison or in custody of any officer for any criminal matter, such prisoner shall not be removed therefrom into the custody of any other officer, unless it be by legal process, or where the prisoner is delivered to some inferior officer to carry to gaol, or is sent by order of any court, judge or justice to any house of correction, or removal from one place to another within the same county for trial or discharge in due course of law, or in case of fire, infection or other necessity; and if any person shall, after such commitment, make out or sign or countersign any warrant for such removal contrary to this act, as well he who makes or signs or countersigns such warrant as the officer executing the same, shall, for every offence, forfeit to the party grieved five hundred dollars.

Under a pe-
nalty

No person to
be removed by
habeas corpus
after the court
of oyer and
terminer pro-
claimed.
K&R. v 1, 289
§ 8

Nor until the
same be ended

VIII. *And be it further enacted*, That after the court of oyer and terminer or gaol delivery, be proclaimed for that county where any prisoner is detained, no prisoner shall be removed from the common gaol upon any *habeas corpus* granted in pursuance of this act, but upon every such *habeas corpus* shall be brought before such court of oyer and terminer or gaol delivery, which court shall thereupon do what to justice shall appertain: *Provided*, That after the court of oyer and terminer or gaol delivery be ended, any prisoner may have a *habeas corpus* according to the intention of this act.

Accessories
before the fact
etc. not bail-
able by this
act.

IX. *And be it further enacted*, That where any person shall appear to be committed by any judge or justice, and charged as accessory before the fact to any felony, or upon suspicion thereof, or with suspicion of any felony, which felony shall be plainly and

especially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of this act or in any other manner than if this act had not been passed.

X. *And be it further enacted*, That no citizen of this state, being an inhabitant or resident within it shall be sent prisoner to any place whatsoever out of this state, for any crime or offence committed within this state; and every such imprisonment is hereby declared to be illegal; and if any such citizen shall be so imprisoned, he may, for every such imprisonment, maintain an action of false imprisonment in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported contrary to the intention of this act, and against every person who shall contrive, write, seal, sign or countersign any writing for such imprisonment or transportation, or shall be aiding or assisting in the same, or any of them, and shall recover treble costs besides damages, which damages so to be given, shall not be less than one thousand two hundred and fifty dollars; and every person knowingly concerned in any manner as aforesaid in such illegal imprisonment or transportation, contrary to this act, and being thereof lawfully convicted, shall be disabled thenceforth to bear any office of trust or profit within this state: *Provided always*, That nothing in this act shall extend to give benefit to any person who shall, by contract in writing, agree with any person to be transported to any place out of this state, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract, nor to any person who shall be transported in pursuance of any law of this state.

XI. *And be it further enacted*, That the penalties by this act made recoverable, shall be recovered by the party grieved, his or her executors or administrators, against the offender, his executors or administrators, by action of debt, or by information in any court of record; and if the offence be more than once committed by the same person, and more than one penalty be by this act made recoverable, any recovery or judgment at the suit of the party grieved shall be a sufficient conviction for the first offence, and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring such person within the said penalty for the second offence: *Provided nevertheless*, That no person shall be sued or molested for any offence against this act, unless within two years after the time when such offence shall be committed, in case the party grieved shall not then be in prison, and if in prison, then within the space of two years after the decease of the person imprisoned, or his delivery out of prison, which shall first happen; and in every such action or information, it shall be lawful for the defendant to plead the general issue, and give the special matter in evidence.

XII. *And be it further enacted*, That the first judge of any court of common pleas of any county in this state shall, on application, have the like power, by and with the advice and consent of the attorney-general, or district attorney of the district including such county, to let to bail any prisoner confined in any such county

K&R v 1, 289
§ 9
31 Car. 2 c. 2.
sec. 21

No citizen to be sent a prisoner out of this state, etc. K and R. v. 1 289 § 10, 11, 12 W. J. c. 7. 4 Bl. Com. 319 References to statutes *supra* The person sent shall have a remedy by action, and shall recover treble costs and damages not less than 1250 dollars.

The party of tending disabled from office. *Proviso*—Persons agreeing to be transported, or transported by law, not within this act.

Penalties under this act how recoverable. K&R. v 1, 289 § 11 References *supra*

Proviso.

Time limited for bringing suits under this act.

Defendant may plead general issue.

First judge of any county may let prisoners to bail on *habeas corpus* with consent of attorn. gen. or dist. attorn. Sec. 31. c 163 § 9

for any crime or offence, as has been heretofore exercised by a justice of the supreme court, and for that purpose shall be and is hereby authorised to allow the writ of *habeas corpus* to bring before him any such prisoner on such application.*

CHAP. LVIII.—(R.L.)

An ACT concerning Fines and Recoveries of Lands and Tenements.

Passed April 5, 1813.

[J. & V. v. 2. 84.—Gr. v. 1. 377.—K. & R. v. 1. 69.—W. v. 5. 405.]

Fines of land
where and
how levied.

K&R. v 1. 69
Gess. 10. c 43
§ 1

10 Rep. 37 38

3 Ibid. 131

Year book 12

Ed. IV. 14 19

Bro. abn. 30

tit. recev. in

value 19—tit.

tail. 36

33 H. 8 c 23 36

34 & 35 H. 8

c 20

43 El. c 4

3 Bl. com. 118

348

13 Ed. 1 c 1

16 Ed. 1, st. 4

Glanv. L. 8 c 1

Bract. L. 5 c 1

5. c 28

32 Geo. 2. c 14

18 Ed. 1, st. 4

15 Ed. 2

5 H. 4. c 14

27 Ed. 1, st. 1.

c 1

23 El. c. 3.

1 R. 3. c. 7.

4 H. 7. c. 24.

31 El. c. 2.

23 Ib. c. 3.

34 Ed. 3. c 16

11 H. 7. c 20.

4 & 5 Ann. c 16

14 Eliz. c 8.

14 Geo. 2. c 20

1 M. st. 2. c 7

4 Ed. 1. c 11.

31 H. 8. c 15.

15 Ed. 1. c 4.

7 H. 8. c 4.

32 H. 8. c 31

34 and 35 H. 8

c 20

The land for

which the fine

is levied to be

accurately de-

scribed in the

original writ.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That all fines of lands and tenements shall be levied in the supreme court, before the justices of the same court, and not elsewhere; and that when the original writ is returned and delivered to the court, a pleader in the presence of the parties before the justices shall say to the court, "we pray leave to agree," and one of the justices shall say; "leave is granted by the court;" and when the parties have made their agreement, proclamation shall be made that all persons keep silence while the agreement between the parties is read; and the pleader shall then read the concord between the parties in open court, and then deliver the same into court, where the cognizors shall acknowledge and sign the same, in the presence of the justices: and it is to be known that the order of the law will not suffer a final accord to be levied without an original writ, and that must be in the supreme court, before two justices of the same court at the least, and in the presence of the parties named in the writ, who must be of full age, of sound memory, and out of prison; and if a woman covert be one of the parties, she must be first examined by one of the said justices, and if she doth not assent thereunto, the fine shall not be levied: and the causes wherefore such solemnity ought to be observed in a fine is, because a fine is so high a bar, of so great force, and of so strong a nature in itself, that it concludeth not only such as be parties and privies thereto, and their heirs, but all other people of the world, being of full age, not covert of baron, within this state, out of prison, and of sound memory, the day of the fine levied, if they make not their entry and bring their action within five years after the fine levied.

II. *And be it further enacted,* That in all cases of fines and recoveries hereafter to be levied or suffered, the original writ, and the proceedings had thereon, shall contain an accurate description of the lands and tenements intended to pass, enure or be conveyed by such fine or recovery, by the actual metes and bounds, and situation thereof, or in such way that persons not parties may know, with convenient certainty, what is intended so to be

* [This section also contained in the act "concerning the courts of common pleas and general sessions of the peace in the several counties of this state," passed April 5, 1813.]

passed or conveyed; and it is hereby made the duty of the court, before such fine or recovery shall be levied or suffered, to examine the description of the property, and if the same does not correspond with the true intent and meaning hereof, the parties shall not be permitted further to proceed therein.

III. *And be it further enacted*, That nothing shall be taken or paid for any writ or writs of covenant for levying of any fines, but the accustomed fees for writing, and for the seal of the same writ or writs; and that all duties and impositions heretofore demanded and taken upon levying of fines for the alienation or license to agree, under the name of fines, post-fines, and the king's silver, shall be and hereby are forever abolished.

IV. *And be it further enacted*, That as well the parties demandant or plaintiff, as the tenants or defendants, that will yield or acknowledge their right of lands or tenements unto others, in pleas of *warrantia charta*, covenant or other pleas, whereupon fines are to be or may be levied, shall, before such fines do pass, appear personally in the said supreme court, so that their age, idiocy, or any other default, (if any be) may be adjudged and discerned by the justices; but if any person or persons, willing to levy such fine or fines, shall be out of this state, or cannot, by reason of age, sickness or other reasonable impediment, come in person before the justices of the said supreme court to acknowledge the same fine or fines, then, and in every such case, a writ or writs of *dedimus potestatem* may be granted out of the court of chancery to the justices of the supreme court, giving power to them, or any one or more of them, or to any other proper and discreet men of good fame and credit, residing at or near the place where such party, being out of this state, or so diseased or unable to travel, shall be, giving power to them, or any two or more of them, to go to the party being out of this state, or so diseased or unable to travel, and to receive his, her or their acknowledgment or cognizance, upon that plea or form of plea that he, she or they have or hath, whereupon the same fine or fines ought to be levied; and the said justice or justices, or other persons so empowered, shall certify the justices of the supreme court thereof by the record, so that all things incident to the same fine or fines being examined by him or them, the same fine or fines may be lawfully levied: And it shall and may be lawful for the chief justice of the supreme court for the time being, to receive such acknowledgments or cognizances as aforesaid, by virtue of his office, and without any such commission as aforesaid: *And further*, That no person to whom any such fine shall be acknowledged, shall be allowed to appear in the said supreme court by attorney, unless such attorney shall be appointed by the person for whom he shall appear, before one of the justices of the supreme court, or commissioner authorised by a writ of *dedimus potestatem* out of the chancery, his or her attorney, to gain or lose in the plea whereupon such fine is to be levied, and his warrant of attorney be signed by such justice or commissioners.

V. *And be it further enacted*, That every person who shall at any time hereafter take the acknowledgment or cognizance of any fine, or any warrant of attorney of any demandant or plain-

W. v 5, 405
Sess. 31, c 219
§ 2

Otherwise not permitted to be proceeded on.

Fines, post-fines and king's silver abolished
K & R. v 1, 70
Sess. 10. c 43
§ 2

Parties how to appear
K & R. v 1, 70
Sess. 10. c 43
§ 3

Before the supreme court.

Or before one of the judges thereof in case of age, idiocy, &c. or before commissioners

And acknowledgment be fore them to be received

The chief justice ex-officio may take acknowledgments, &c.

No person to appear by attorney unless appointed before a judge of the sup. court or a comm'r. etc.

Time of taking cognizance of fine or warrant of attorney to be certified.

K&R. v 1, 71
Sess. 10, c 43
§ 4

Within what
time to be cer-
tified.

No attorn-
ment to be
entered with-
out the ap-
pearance of
the party

Otherwise de-
clared void

Notice of fines
and proclama-
tions to be
published in
certain news-
papers.
W. v S. 405
Sess. 31, c 219
§ 2

Fines to be
proclaimed
K&R. v 1, 72
Sess. 10, c 43
§ 5
W. v S. 405
Sess. 31, c 219
§ 2

References
supra

Whom to con-
clude and
when
Exceptions
thereto
1 fines covert
2 infants
3 prisoners
4 persons out
of the state
5 insane
6 when the
parties levy-
ing have noth-
ing in the ten-
ements.
7 titles accru-
ing after fine
engrossed.

tiff, in any plea whereupon any fine or fines shall be levied, or of any demandant or plaintiff, or tenant or vouchee, for suffering any common recovery, or shall certify them or any of them, shall, with the certificate of the concord or warrant of attorney, certify also the day and year when the same was acknowledged; and that no person who shall take such acknowledgment or cognizance of any fine, or any warrant of attorney for any of the purposes aforesaid, shall be bound or by any means enforced to certify any such acknowledgment or cognizance, or warrant, except it be within one year next after the same shall be taken: *And further*, That no attornment in or upon any fine be entered upon record, unless the party mentioned to attorn therein shall have first appeared in court, in person or by attorney, warranted by the hand of one of the justices of the supreme court, or commissioners as aforesaid, upon a writ of *quid juris clamat quem redditum reddat*, or *per qua servitia*, as the case may require; and every entry of attornment hereafter to be made, where there shall be no appearance as aforesaid, shall be utterly void and of none effect, without any writ of error or other means to be used for the avoiding thereof.

VI. *And be it further enacted*, That in all cases of fines and proclamations hereafter to be levied, the parties shall publish a notice thereof, five weeks successively, in one of the newspapers printed in the city of New-York, and in the newspaper printed by the printer to the state, which notice shall contain the names of the parties, the description of the property, and the time of levying the fine.

VII. *And be it further enacted*, That after the engrossing of every fine hereafter to be levied in the said supreme court, before the justices of the same court, of any lands, tenements or other hereditaments, the same fines shall be openly and solemnly read and proclaimed in the same court four times, that is to say: once in the same term wherein it is engrossed; once in every of the two terms holden next after the same engrossing, and once in term after the court is satisfied that notice has been given as aforesaid; and in the same time that it is so read and proclaimed, all pleas shall cease, and the said proclamations being so had and made, the fine shall be a final end, and conclude as well privies as strangers to the same, except women covert, not parties to the same fine, and every person then being within the age of twenty-one years, in prison, or out of this state, or not of sound mind at the time of the said fine levied, not parties to such fine; saving to every person and persons, and to their heirs, other than the parties to the said fine, such right, claim and interest, as they have to or in the said lands, tenements or other hereditaments, at the time of such fine engrossed, so that they pursue their title, claim or interest, by way of action or lawful entry, within five years next after the said proclamations had and made; and saving also to all persons such action, right, title, claim and interest, in or to the said lands, tenements or other hereditaments, as first shall grow, remain, descend or come to them, after the said fine engrossed, and proclamation made by force of any gift, or by any other cause or matter had and made before the said fine levied.

so that they take their action or pursue their said right or title according to law, within five years next after such action, right, claim, title or interest, to them accrued, descended, fallen or come; and that they and their heirs may have their said action against the pignor of the profits of the said lands, tenements and other hereditaments, at the time of the said action to be taken; and if the same persons, at the time of such action, right and title, accrued, descended, remained or come unto them, be covert of baron, or within age, or in prison, or out of this state, or not of sound mind, then their action, right and title, to be reserved and saved to them, and to their heirs unto the time that they come and be at their full age of twenty-one years, out of prison, within this state, discover and of sound mind, so that they or their heirs take and pursue, according to law, their said actions or their lawful entry, according to their right and title, within five years next after they come and be at their full age, out of prison, within this state, discover and of sound mind: *And further*, That all such persons as be covert of baron, and not party to the fine, and every person being within the age of twenty-one years, or in prison, or out of this state, or not of sound mind, at the time of the said fine levied and engrossed, and by this act before excepted, having any right or title or cause of action to any of the said lands, tenements or other hereditaments, that they, or their heirs inheritable to the same, take their said actions or lawful entry, according to their right and title, within five years next after they come and be of the age of twenty-one years, out of prison, within this state, discover and of sound mind, and the same actions sue, or their lawful entry take and pursue, according to law; and if they do not take their actions and entry as aforesaid, they and every of them, and their heirs, and the heirs of every of them, shall be concluded by the said fine forever, in like form as they be that be parties or privies to the said fine, saving to every person and persons not party nor privy to the said fine, their exception to avoid the same fine, for that those who were parties to the said fine had nothing, nor either of them, nor any person or persons to their use, nor to the use of either of them, had any thing in the lands and tenements comprised in the said fine, at the time of the said fine levied.

Limitation of
bringing ac-
tions after
fine levied.

When and
how barred

Exceptions

VIII. *And be it further enacted*, That no entry to be made upon any lands, tenements or hereditaments, shall be of any force or effect to avoid any fine levied or to be levied, with proclamations in the said supreme court, unless upon such entry an action shall be commenced within one year after making such entry, and prosecuted with effect.

No entry to
avoid a fine
valid unless
suit be bro't
in a year.
K & R. v 1, 173
Sess. 10. c 43
§ 6

IX. *And be it further enacted*, That every writ of covenant, and other writ whereupon any fine shall hereafter be levied, with the return thereof, the writ of *dedimus potestatem*, for taking the acknowledgment or cognizance of any of the same fines, with the return thereof, the concord, note and foot of every such fine, the proclamations thereupon, and the license to agree, and also every original writ of entry *in the post*, or other writ whereupon any common recovery shall hereafter be suffered or passed, with the returns of the same writs, and the writs of summons *ad warrantum*

Writs and
proceedings to
be enrolled
K & R. v 1, 173
Sess. 10. c 43
sec. 7.

sandum, with the returns thereof, and every warrant of attorney, as well of every demandant and tenant as vouchee, shall and may be enrolled in rolls of parchment, to be of record forever, and to remain in the safe custody of the clerk of the supreme court and his successors; and that the said enrollments shall be of as good force and validity in law, to all intents and purposes, as the same writs, concords, notes, feet, and warrants of attorney, ought to be by law: *And further*, That the original writ whereupon any fine shall be levied, with the return thereof, the warrants of attorney, if there be any taken before any or either of the justices of the supreme court, the license to agree, and concord of every fine, shall be enrolled upon one and the same roll; and the writs of *dedimus potestatem*, if there be any, with the returns thereof, and the note and foot of the same fine shall be enrolled upon separate rolls.

And for the more easy discovery of fines and the security of purchasers,

Foot of the
fine to be re-
corded in the
county where
lands lie.
K. & R. v. 1.
74.
Sess. 10, ch.
43, sec. 8

Within what
time.

Unless so re-
corded not to
conclude any
others than
parties and
privies.

The time of
levying and
to affix a co-
py of the en-
try of the fine
on the court
house door.

Penalty for
omission.

No fines to be
reversed for
razure, etc.
K. and R. v. 1.
74.

Sess. 10, ch. 43, § 9

X. *Be it further enacted*, That the counterpart of the foot of every fine hereafter to be levied, which is to be delivered to the party, shall be signed by one of the judges of the said supreme court and by the clerk of the said court, and shall be recorded by the clerk of the city or county where the lands or tenements comprised in the same fine shall be situated, in a book to be by him kept for that purpose, within one year next after the engrossing of the same fine at the expence of the party to whom the same shall be levied. And no fine hereafter to be levied, shall conclude any other person than parties and privies thereto, unless the said counterpart of the foot of such fine, shall be so recorded as aforesaid, within the time hereby limited for that purpose; and that no fine heretofore levied shall conclude or bar any *bona fide* purchaser whose title shall accrue subsequently to the passing of this act, unless the counterpart of the foot of such fine, if the same hath not been recorded, shall be recorded in the manner aforesaid within one year after the passing of this act. And that the respective clerks of every city and county of this state, for the time being, shall without fee or reward, immediately after recording the same, make and write, or cause to be made and written, a table or note, wherein shall be contained the contents of the same fine so recorded in their respective offices; that is to say, the names of the parties and description of the lands and tenements comprised in such fine, and the time of levying the same; and shall on the first day of the next general sessions of the peace for the same city or county, affix the same on the principal door of the court house of the same city or county, and see that the same continue there during the same sessions, upon pain that every clerk offending therein shall forfeit the sum of twenty-five dollars; one moiety thereof to the people of this state, and the other moiety to him or them who will sue for the same in any court of record by action of debt, bill, plaint or information.

XI. *And be it further enacted*, That no fines, proclamations upon fines or common recovery, heretofore had, levied, suffered or passed, or hereafter to be had, levied, suffered or passed, shall be reversible by any writ of error for any razure, interlining, misen-

loring of any warrant of attorney, or of any proclamation, misreturning or not returning of the sheriff, or other want of form in words, and not in matter of substance. 33 E. 4, 3, 5

XII. *And be it further enacted*, That no fine or common recovery shall hereafter be reversed or avoided for any error or defect therein, unless the writ of error or suit for reversing such fine or recovery be commenced or brought and prosecuted with effect within five years after such fine levied or recovery suffered: *Provided always*, That if any person who is or shall be entitled to any such writ of error as aforesaid, shall at the time of such title accrued, be within the age of twenty-one years, or covert of baron, or imprisoned, or not of sound mind, or out of this state, then such person or his or her heirs, notwithstanding the said five years expired, shall and may bring his, her or their writ of error for reversing any such fine or recovery, so as the same be brought, within five years after his or her full age, discoverture, enlargement out of prison, coming of sound mind, or coming within this state, but not afterwards, or otherwise.

Within what time writ of error to be brought on a fine, K. and R. v. 1, 74 Sec 10, ch 48, sec. 10 Provide as to infants, etc.

CHAP. XXXI.—(R.L.)

An ACT to enable Grantees of Reversions to take advantage of the Conditions to be performed by Lessees.

Passed March 19, 1813.

[J.&V. v. 2. 184.—Gr. v. 2. 13.—K.&R. v. 1. 105.—W. v. 4. 254.]

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly*, That as well all and every person and persons, bodies politic and corporate, their heirs, successors and assigns, which have or shall have any gift or grant of the people of the state of New-York, by any ways or means howsoever, of any manors, lands, tenements, rents or other hereditaments, or of any reversion, or reversions of the same, which did belong or appertain to any other person or persons, and have, or shall, by any ways or means, come to the people of the state of New-York; as also all other persons being grantees or assignees, to or by the people of the state of New-York; or to or by any other person or persons, and the heirs, executors, successors and assigns of every of them, shall and may have and enjoy like advantages against the lessees, their executors, administrators, and assigns, by entry for the non-payment of the rent, or for doing of waste, or other forfeiture: and also shall and may have and enjoy, all and every such like and the same advantage, benefit and remedies, by action only, for not performing other conditions, covenants or agreements, contained and expressed in their leases, demises or grants, against all and every the said lessees, and termors, and grantees, their executors, administrators and assigns, as the lessors and grantors, themselves or their heirs, or successors, ought, should, or might have had and enjoyed, at any time or times, in like manner and form, as if the reversion of such

Grantees of reversions may take advantage of conditions, &c. K. & R. v. 1. 105. Sec 11 ch 7 § 1 34 H 2, c. 34

lands, tenements or hereditaments, had remained and continued in the same lessors or grantors, or in their heirs or successors.

Lessees may have like remedies against grantees of reversions which they might have had against their grantors. K. & R. v. 1. 108, sec. 2. 33. 1. s. 34. 3. 3 John. Rep. 468

Except recoveries in value

This act extended to grants or leases in fee, reserving rents W v 4 384 Sess. 26. ch. 99. 1 John. Rep. 511.

II. *And be it further enacted*, That all termors, lessees and grantees, of manors, lands, tenements, rents, or any other hereditaments, for term of years, or life, or lives, their executors, administrators and assigns, shall and may have like action, advantage and remedy, against all and every person and persons, and bodies politic and corporate, their heirs, successors and assigns, which have or shall have any gift or grant of the people of the state of New-York, or of any other person or persons, of the reversion of the same manors, lands, tenements, rents or hereditaments, so letten, or any parcel thereof, for any condition, covenant or agreement, contained or expressed in their lease or leases, as the same lessees or any of them might and should have had against their lessors and grantors, their heirs or successors, all benefits and advantages of recoveries in *value*, by reason of any warranty, in deed or in law, by voucher or otherwise only, excepted.

III. *And be it further enacted*, That all the provisions of this act, and the remedies hereby given, shall be construed to extend as well to grants or leases, in fee, reserving rents as to leases for life and years, any law, usage or custom, to the contrary thereof notwithstanding.

CHAP. XXIII.—(R.L.)

An ACT concerning Wills.*

Passed March 5, 1813.

[Charter of rights, &c. Oct. 26, 1683.—Br. ed. 4, 15.—S. & L. v. 1. 14, 432.—V. 8. v. 1. 15, 16, 82.—Ibid. v. 2. 766.—J. & V. v. 1. 278.—Ibid. v. 2. 72, 93, 211.—Gr. v. 1. 121, 239, 364, 387, 388, 392.—Ibid. v. 2. 41, 325.—K. & R. v. 1. 65, 178, 319.—Sess. 26. ch. 99.]

Lands may be devised K. & R. v. 1. 178—sec. 1. 27 H 8, c 10 38 H 8, c 1 34 & 35 H 8, c 5 29 Car. 2, c 5

I. *BE it enacted by the people of the State of New-York, represented in Senate and Assembly*, That any person having any estate of inheritance, either in severalty, in coparcenary, or in common, in any lands, tenements or hereditaments, may at his own free will and pleasure, give or devise the same, or any of them, or any rent or profit out of the same, or out of any part thereof to any person or persons (except bodies politic and corporate) by his last will and testament, or by any other act, by him lawfully executed.

Wills of land to be in writing, and how executed K. & R. v. 1. 178, sec. 2. 29 Car. 2, c 5 § 13

II. *And be it further enacted*, That every such last will and testament shall be in writing, and signed by the party making the same, or by some other person in his presence, and by his express direction; and shall be attested and subscribed in the presence of such party, by three or more credible witnesses, or else such last will and testament shall be utterly void.

[* As to Wills and their construction generally, &c. vide 2 John. ca. 314, 384.—3 Ibid. 383.—2 John. Rep. 31.—4 Ibid. 61.—5 Ibid. 144.—6 Ibid. 54, 73, 185.—7 Ibid. 224, 557.—8 Ibid. 59, 141.—9 Ibid. 104, 222, 312.—10 Ibid. 12, 19, 39.]

III. *And be it further enacted*, That no such last will and testament, duly executed as aforesaid, or any part thereof, shall be revocable, or be altered, otherwise than by some other will or codicil in writing, or other writing of the party, to such last will and testament, declaring the same, and signed, attested and subscribed, in manner aforesaid, or by burning, cancelling, tearing or obliterating such last will and testament, by the testator himself, or in his presence, and by his direction and consent.

IV. *And be it further enacted*, That all estates *per auter vie* shall be devisable by last will and testament duly executed as aforesaid; and if no such devise thereof be made, the same, or so much thereof as shall not be devised, shall go to the executor or administrator, of the party who had the estate, to be applied and distributed as part of the personal estate.

V. *And be it further enacted*, That no last will and testament aforesaid made by a married woman, or by any infant, idiot, or person of insane memory, shall be valid in law.

VI. *And be it further enacted*, That where any real estate shall be devised by last will and testament as aforesaid, the executors to such will, or any person interested in such estate, may cause the said will to be brought before the supreme court or the court of common pleas, of the county in which such real estate may be; and the said court shall cause the witnesses to such will to be examined in open court, or if it shall appear to the court at the examination of any witness to such will, that the other witness or witnesses to the said will, are dead, or reside out of this state, then such proof shall be taken in open court, of the hand writing of the testator, or of the witness or witnesses so dead or absent, or of such other circumstances as would be proper to prove the said will upon a trial at law; and the said court shall cause all such examinations and proofs to be reduced to writing; and if it shall thereupon, in either case appear, that such will was duly executed, and that the testator at the time of executing the same, was of full age, and of sound mind and memory, and not under any restraint, then the court shall order their clerk to record the same will, together with the proof so taken, in a book to be provided by the clerk for that purpose; and that every will heretofore proved, or which shall hereafter be proved in manner aforesaid, and shall have a certificate thereof, endorsed thereon, signed by the clerk of the court in which the same shall have been so proved, with the seal of the said court thereunto annexed; and also the record of such will, and the transcript of such record, certified by the clerk, and sealed with the seal of the court, shall be as effectual in all cases as the original will would be if produced and proved.

VII. *And be it further enacted*, That if all the witnesses to such will are dead, or reside out of this state, then the said court shall, in open court, take such proof of the hand writing of the testator, or of either or all of the witnesses to the same will, or of such other circumstances as would be proper to prove the same will, upon a trial at law; and shall cause all such examinations and proofs to be reduced to writing, and to be recorded as aforesaid; and the record thereof, and the transcript of such re-

And how may
be revoked
K. & R. v. 1.
178. sec. 3
20 Car. 2, c. 3
§ 6, 25
7 John. Rep.
304—9 lib. 312

Estates *per
auter vie* de-
visable
K. & R. v. 1.
178. sec. 4
19 Car. 2, c. 8
§ 12

Who, incapa-
ble of devising
K. & R. v. 1. 178
§ 5
35 H. 8. c. 1
34 & 35 H. 8. c. 5

Wills concern-
ing land how
proved in the
supreme court
and courts of
common pleas
K. & R. v. 1.
178. § 6
Secs. 26. ch. 99

Witnesses
how to be ex-
amined

Examinations
to be reduced
to writing,
and what to
contain as
proof of execu-
tion of will.
5 John. Rep.
144—9 lib. 31.
To be record-
ed by the
clerk in a
book

Effect of such
proof
3 John. ca. 324
2 Atk. 324, 424
3 Atk. 17.

If the witness-
es be dead or
absent from
U. S. how
proven
K. & R. v. 1.
178. sec. 7.
Secs. 26. ch. 99

Proof to be
recorded.

cord, certified as aforesaid, shall be received as evidence upon any trial or controversy concerning the same will, and shall be of the same force and effect as if taken in open court upon such trial: *Provided*, it shall appear that the lands in question have been uninterruptedly held under the said will for the space of twenty years; and the same will shall be deposited and remain with the clerk of the same court, for the benefit of the parties interested therein; and he shall, upon request, make and deliver a true copy thereof to any person requiring the same: *Provided also*, That if it shall appear upon such examination, that any lands claimed under the said will, have been held under the same for twenty years previous thereto, such will shall also be recorded as aforesaid; and every such will, having a certificate of such proof endorsed thereon, signed by the clerk, and sealed with the seal of the court; and also the record of every such will, and the transcript of such record, certified by the clerk, and sealed with the seal of the court, shall be evidence in all cases respecting such lands.

Effect of such proof.
 Provision.
 Further provision.
 Notice of application to prove wills.
 K. & R. v. 1.
 179, sec. 8

Witnesses compelled to attend.

And to produce wills,

On pain of commitment.

When wills to be proved in the sup. ct.
 K. & R. v. 1.
 180, § 9.
 [Vide cases cited in 3 John. ca. 283, as to English decisions, &c.]
 Expenses of such proof & by whom paid
 K. and R. v. 1.
 180 § 10

Powers to executors to sell lands, valid in those who qualify
 K. and R. v. 1.
 180 § 11

VIII. *And be it further enacted*, That it shall not be lawful for the said court to proceed to prove any such will, until proof be made that due notice of such intention had been given to the heirs of the testator; or if such heirs are not to be found within this state, fixed up at the last place of abode of such testator, at least fifteen days before such examination, that the said court, or any judge thereof, may cause all such witnesses, as any person interested may desire to be summoned, to appear at such court and testify; and if any witness neglects or refuses to appear, the said court may cause such witness to be brought before the same court to testify touching the premises; and that every person having the custody or power of any such will, shall, on request, produce the same before the said court, for the purpose aforesaid; and when the same shall be proved, and shall also be recorded as aforesaid, the original shall be returned to the person who brought it, if such person desire it; and if any such person refuse to produce and deliver such will, the said court may commit such person to gaol, there to remain until he produces and delivers the same to such court, or a judge thereof.

IX. *And be it further enacted*, That if the real estate so devised, be in several counties, then such will shall be proved in manner aforesaid, in the supreme court, and recorded as aforesaid, by the clerk thereof; and the supreme court shall, in such cases, proceed in like manner, and have like powers in the premises.

X. *And be it further enacted*, That the expense of proving and recording the said wills shall be paid by the person applying to have the same done, and the witnesses and officers shall have the like fees for their attendance and services on proving a will as aforesaid, as for the like attendance and services in other cases.

XI. *And be it further enacted*, That where any lands, tenements or hereditaments have been or shall be given or devised by any last will and testament executed as aforesaid to the executors therein named, or any of them to be sold or have been or shall be thereby ordered to be sold by such executors or any of

them, and after the death of the testator part of the executors 21 H 8 c 4
named refuse or neglect to take upon them the execution of the 6 John Rep. 73
said will, then all sales of the said lands, tenements or heredita- 9 Ib. 104
ments by the executor or executors who take charge of the ad-
ministration of the said will, shall be equally valid as if the resi-
due of the executors had joined in the sale.

XII. *And be it further enacted*, That if any person be a wit-
ness to the execution of any will to whom any beneficial devise,
legacy, interest or appointment affecting any real or personal
estate, except charges on the real estate for the payment of any
debt be given or made, such devise, legacy, interest or appoint-
ment shall, so far only as concerns such person or any claiming
under him be void, and such person shall be admitted as a compe-
tent witness. *Devices and legacies to subscribing witnesses void*
K. and R. v. 1
180 § 12
25 Geo. 2. c. 6
2 Bl. Com. 377
378
1 John. ca. 163
Ib. 314.
4 John Rep. 311

XIII. *And be it further enacted*, That if by any will any real
estate be charged with any debt, and any creditor whose debt is
so charged be a witness to such will, he shall, notwithstanding the
charge, be a competent witness: *Provided always*, That the
credit of any witness to a will in any of the cases in this act
before mentioned, shall be subject to consideration and deter-
mination in like manner as the credit of witnesses is in all
other cases. *Creditors of testator good witnesses to wills*
K. & R. v. 1,
180. § 13
25 Geo. 2. c. 6

XIV. *And be it further enacted*, That no nuncupative will
shall be good where the estate thereby bequeathed shall exceed
the value of seventy-five dollars, unless the same be proved by the
oaths of three witnesses at the least, who were present at the
making thereof, nor unless it be proved that the testator at the
time of pronouncing the same did bid the persons present, or
some of them, bear witness that such was his will or words to
that effect, nor unless such nuncupative will be made in the time
of the last sickness of the deceased, and in his dwelling-house or
where he had been resident for ten days or more next before the
making of such will except where such person was surprised or
taken sick being from home and died before his return to the
same. *Nuncupative wills how to be made and proved*
K. & R. v. 1,
181. § 14.
20 Car. 2. c. 3
sec 10

XV. *And be it further enacted*, That after six months from the
speaking of the pretended testamentary words no testimony shall be
received to prove any nuncupative will, except the said testimo-
ny or the substance thereof, was committed to writing within six
days after the making of the said will: *And further*, That no
testamentary or probate of any nuncupative will shall pass
the seal of any court until fourteen days at the least after the de-
cease of the testator shall be fully expired, nor shall any nun-
cupative will be at any time received to be proved unless process
bath first issued to call in the widow or next of kin to the deceas-
ed, to the end they may contest the same if they please. *Limitation to proof thereof*
K. & R. v. 1,
181. sec 15

XVI. *And be it further enacted*, That every person may by
will, in writing, give or bequeath his personal estate in the same
manner as if this act had not been passed, and no will in writing
concerning any personal estate shall be repealed, or any part
thereof revoked or altered by any words or will by word of
mouth only, unless the same be in the life time of the testator
committed to writing, and after the writing thereof read unto the
wills of personal estate when good
K. and R. v. 1
181. sec 16
How revocable
Reference supra

20 Car 2 c 3
sec 6, 23
References
supra

Widows, soldiers and mariners may make wills and how

K and R. v 1
181 sec 17
20 H. 3, c. 2
20 Car. 2 c 3
sec 23

Guardians by deed or will how appointed
K and R. v 1
181. § 18

23 Car 2 c 24
sec 8, 9, 10, 11

Their power

Further power.
K. & R. v. 1.
182. § 19.
References
supra

Codicils, &c
K and R. v 1
182 sec 20

Exemplifications of the records of wills, in certain cases testimony
2 Caines's Rep
363
Pow. on Dev.
766
Skia. 174
1 Ld. Ray 731
1 Caines's ca
in Error 27

testator and allowed and approved of by him, and proved so to be done by three witnesses at the least.

XVII. *And be it further enacted*, That widows may bequeath the crop in the ground of their lands holden in dower, and that any soldier being in actual military service, and any mariner being at sea, may dispose of his personal estate in the same manner as if this act had not been passed.

XVIII. *And be it further enacted*, That when any person hath any child under the age of twenty-one years, and not married at the time of his death, it shall and may be lawful to and for the father of such child, whether born at the time of the decease of the father, or at the time in *venire sa mere*, or whether such father be within the age of twenty-one years or of full age, by his deed executed in his life time or by his last will and testament in writing, signed by such father or by some other person in his presence and by his express direction, and attested and subscribed in the presence of such father by three or more credible witnesses in such manner and form and from time to time as he shall respectively think fit to dispose of the custody and tuition of such child for and during such time as he or she shall respectively remain under the age of twenty-one years, or any less time, to any person or persons in possession or remainder, and that such disposition of the custody of such child shall be good and effectual against every person claiming the custody or tuition of such child as guardian in *socage* or otherwise, and that such person or persons to whom the custody of such child be so disposed or devised as aforesaid, may maintain an action of ravishment of ward or trespass against any person who shall wrongfully take away or detain such child for the recovery of the same, and shall and may recover damages in the said action for the use and benefit of such child.

XIX. *And be it further enacted*, That any person to whom the custody of any child is so disposed or devised may take into his custody to the use of the said child the profits of the real estate of such child, and also the tuition of the child and the custody and management of his personal estate, until such child arrives to the age of twenty-one years or any less time, according to such disposition aforesaid; and may bring such actions in relation thereunto as a guardian in *socage* might lawfully do.

XX. *And be it further enacted*, That every provision in this act shall apply as well to codicils as to wills.

XXI. *And be it further enacted*, That the exemplification of the record of any last will and testament heretofore proved before, and recorded, in the office of the judge of the court of probate in this state, before the first day of January, in the year one thousand seven hundred and eighty-five, (the original of which on due and vigilant search cannot be found in the office of the said judge of probate, or of the office of the surrogate of the city and county of New-York, under the seal of the said court of probate or surrogate, shall be received and read in evidence in any court of justice within this state, in actions real or mixed, and have the like force and effect as in personal actions; and that

the certificate of the judge or surrogate aforesaid, under the seal of office, of such search, and that the original will cannot be found in his office, shall be evidence thereof.

CHAP. XCVII.—(R.L.)

An ACT concerning Deeds.

Passed April 12, 1813.

[V. S. v. 1. 83.—Ibid. v. 2. 612, 765.—J.&V. v. 2. 92, 366.—Gr. v. 1. 386.
Ibid. v. 2. 99, 452.—K.&R. v. 1. 478.—W. v. 4. 604, 615.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That every deed, conveyance, or writing, of or concerning any lands, tenements, or real estate within this state, heretofore made or hereafter, to be made, in order to entitle it to be recorded, shall, except in the cases herein after specified, be duly acknowledged by the party or parties executing the same, or proved by one or more of the subscribing witnesses thereto, before one of the judges of the supreme court of the United States, or before one of the justices of the supreme court of this state, or before any one of the judges or justices of the supreme or superior courts of any state or territory within the United States, or before the first judge of the district of Columbia, or a master in chancery of this state, or the first judge of any court of common pleas, or any other judge of any court of common pleas in this state, or before the mayor or recorder of either of the cities of New-York, Albany or Hudson, or the mayor of the city of Schenectady, and shall and may be recorded in the office of the secretary of this state or of the clerk of the county in which the lands or real estate are situated, and a certificate of such acknowledgment or proof, signed by the person before whom the same was taken, shall be endorsed thereon, and recorded with the said deed, conveyance or writing aforesaid: *Provided however,* That no such acknowledgment shall be taken, unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the person described in, and who has executed such deed, conveyance or writing, and that no such proof shall be taken unless the officer taking the same shall know the person making such proof, or have satisfactory evidence that he is a subscribing witness to such deed, conveyance or writing, and that such witness know the person who executed the same, all of which shall be inserted in the said certificate of such acknowledgment or proof; and in case of the examination of witnesses, it shall also be the duty of such officer to set forth in such certificate what witnesses were examined before him, and the substance of the evidence by them given.

Deeds before whom to be acknowledged or proved.

K and R v 1
478
Sess. 34. ch. 1
§ 2
Sess. 34, ch.
133
W. v 4, 615
Sess. 20. ch.
167
S. Gen. 2 c 6
27 H. 8 c 16
34 & 35 H. 8
c 22
33 Geo. 2 c 30

Provided,

[As to deeds, acknowledgments, &c. generally.

3 John. Rep.
200—6 ib 149
1 ib 492—3 ib
77. 330, 404—
5 ib 58, 120—
6 ib 125, 123,
7 ib 175, 317
258, 341 358
8 ib 188, 479,
320—9 ib 73,
136, 63, 109,
334, 336]

Femes covert to be privately examined as to their assent to the deeds.
[Colonial charter, &c. of Oct. 20, 1683.]

II. *And be it further enacted,* That no estate of a feme covert, residing in this state, shall pass by her deed, nor shall the same be recorded without a previous acknowledgment taken in manner aforesaid, and made by her on a private examination, apart from her husband, that she executed such deed freely without any

R. & R. v. 1.
478 § 2.
11 R. 7 c 20
[John Rep. 81
Feme covert
executing and
duly acknow-
ledging a lease
valid]
Unless she ap-
pears out of
the state

feet or compulsion of her husband, which shall in like manner be contained in the certificate of such acknowledgment, to be endorsed on such deed. But where any feme covert not residing in this state, shall join with her husband in any deed or conveyance, of or relating to any lands or real estate situated within this state, she shall thereby be barred of and from all claim of dower, and all other right and title therein, in like manner as if she were sole, and the acknowledgment or proof of such deed, conveyance or writing may be the same as if she were sole, and shall entitle such deed, conveyance or writing to be recorded as aforesaid.

British sub-
jects resident
in G. Britain,
may prove or
acknowledge
their deeds
before the
mayor of
London.

R. and R. v 1
478 § 3

III. *And be it further enacted*, That all acknowledgments and proofs of any deeds, conveyances or writings, made as aforesaid by British subjects actually residing within the kingdom of Great Britain or the dominions thereunto belonging, to any citizens of this state, of or concerning any lands or real estate situate within this state, taken or made or hereafter to be taken or made, before the mayor of the city of London, and duly certified under the seal of office of the mayoralty of the said city, or before any minister of the United States resident in Great-Britain, shall be of the like force and validity, and entitle the same to be recorded as if the same were taken before a judge of the supreme court of this state.

Deeds for
lands in cer-
tain counties
to be recorded
R. & R. v. 1.
478
Sess. 34. c. 155
§ 4
2 and 3 Ann.
c 4
5 Ann. c 14
Or deemed
fraudulent
and void a-
gainst a subse-
quent bona
fide purchaser
or mortgagee.
S. John. Rep.
137

IV. *And be it further enacted*, That every deed, conveyance or writing, made and executed after the first day of February in the year of our lord one thousand seven hundred and ninety-nine, whereby the right or title to any lands or tenements, situated in the several counties of Herkimer, Oneida, Jefferson, Lewis, St. Lawrence, Otsego, Madison, Chenango, Broome, Tioga, Steuben, Allegany, Cattaraugus, Chataugue, Ontario, Genesee and Niagara, may be affected either in law or equity, after being acknowledged or proved as aforesaid, shall be recorded, if the same be not already done, in the clerk's office in the counties in which such lands shall be situated, in books to be provided by the clerks of the same counties respectively; and that every deed and conveyance made and executed after the said first day of February, whereby any of the said lands may be any way affected in law or equity, shall be adjudged fraudulent and void against any subsequent bona fide purchaser or mortgagee for a valuable consideration, unless the same be recorded as by this act is directed, before the recording the deed or conveyance under which such subsequent purchaser or mortgagee shall claim.

Deeds to be
recorded in
the order of
time in which
they shall be
received.
R. and R. v 1
478
Sess. 34. c.
155 § 5

And a certifi-
cate, etc. to
be enclosed.

V. *And be it further enacted*, That every deed, conveyance or writing of or concerning any lands or real estate within this state, which by virtue of this act shall be entitled to be recorded as aforesaid, shall be recorded in the order and as of the time when the same shall be delivered to the secretary or any clerk for that purpose, and shall be considered as recorded from the time it was so delivered, and the said secretary or clerk shall make an entry in the margin of the record thereof of the day, month and year, and the time of the day when the same is so recorded, and endorse and sign a certificate on such deed, conveyance or writing of the particular time when, and the book and

page in which the same is so recorded ; and that every deed, conveyance or writing so acknowledged or proved, whether the same be recorded or not, or the record thereof, or a transcript of such record, certified by the secretary of this state, or the clerk in whose office the same may be recorded or registered, under the seal of the court of common pleas of the county whereof he is clerk, may be read in evidence in any court of this state without further proof thereof.

VI. *And be it further enacted*, That the record of any conveyance relating to any lands or tenements within this state, executed previous to the fourth day of July, one thousand seven hundred and seventy-six, and acknowledged or proven according to law, and recorded in the office of the clerk of any of the counties within the late colony of New-York, or a copy of such record, certified by any such clerk, shall be evidence in any court of law or equity in the same manner as the original conveyance would be, if produced and proven.

The record of certain conveyances to be good evidence.
Sess. 34. c. 7 § 1
10 Ann. c. 18 § 3

VII. *And be it further enacted*, That every conveyance or writing, of or concerning any lands or real estate within this state, which hath been acknowledged or proven previous to the sixth day of April one thousand eight hundred and one, agreeably to any law of this state in force at the time of making any such acknowledgment or proof, and not recorded, shall be entitled to be recorded by the secretary of this state, or the clerk of the county in which the lands described in such deed, conveyance or writing, are situated, and that every deed, conveyance or writing, so acknowledged or proved, whether the same be recorded or not, or the record thereof, or a transcript of such record, certified by the said secretary or the clerk in whose office the same may be recorded under the seal of the court of common pleas of the county whereof he is clerk, may be read in evidence in any court of this state without farther proof thereof: *Provided always*, That nothing in this section contained shall be deemed or taken to extend to deeds, conveyances or writings for lands lying in the Western District in the tract set apart for the officers and troops of this state serving in the army of the United States which were not deposited with the clerk of the city and county of Albany on or before the first day of May, one thousand seven hundred and ninety-five, in pursuance of the act, entitled "an act for registering deeds and conveyances relating to the military bounty lands," passed the 8th day of January, 1794, and the act to amend the same, passed the 27th day of March, in the year aforesaid, nor to any deeds, conveyances or writings, of or concerning the lands last mentioned, made and executed subsequent to the said 8th day of January, 1794.

Deeds duly proved before April 6, 1801, may be recorded.
Sess. 20, c. 187 § 2.

And the record thereof good evidence.
3 Ann. c. 18
8 Geo. 3. c. 6 § 23

Providing.

VIII. *And be it further enacted*, That it shall not be lawful for the said secretary, or any clerk of any city or county in this state, to record any deed, conveyance or writing above mentioned, unless the same shall be acknowledged or proved as is directed by this act, and which acknowledgment or proof shall be recorded therewith.

Deeds not duly acknowledged not to be recorded.
Sess. 24, c. 153 § 6

IX. *And be it further enacted*, That if either of the said judges, or other officers within this state authorised to take the ac-

The judge or other officer taking an es-

knowledge or proof of deeds, or the said secretary, or any clerk of any county or any deputy of such secretary or clerk shall be guilty of any neglect, misdemeanor or fraudulent practice in the execution of the duties prescribed by this act, they and every of them shall, in every such case, be liable to pay treble damages, with costs of suit, to any party injured thereby, to be recovered by action of debt, or by information in any court of record in this state.

Part of a certain act repealed.
Secs. 24, c. 134, sec. 4

X. *And be it further enacted*, That so much of the act, entitled "an act for registering deeds and conveyances relating to the military bounty lands," passed the 8th day of January, 1784, as provides for the acknowledgment or proof of deeds or conveyances in a manner different from the provision of this act, shall be and the same is hereby repealed, so far as respects conveyances made after the sixth day of April, in the year of our Lord one thousand eight hundred and one.

Deeds, etc. for lands in Cattaraugus county to be recorded in Niagara until the court, &c. is held in Cattaraugus, and thereafter to be recorded in Cattaraugus.

XI. *And be it further enacted*, That until the holding of the first term of the court of common pleas and general sessions of the peace in the county of Cattaraugus, all deeds, mortgages, conveyances and writings whereby any real estate, situated in the said county, may be affected in law or equity, shall be recorded in the clerk's office of the county of Niagara, and that thereafter all such deeds, mortgages, conveyances and writings shall be recorded in the said county of Cattaraugus.

CHAP. XXXII.—(R.L.)

*An ACT concerning Mortgages.**

Passed March 10, 1813,

[S.&L. v. 2. 19, 203.—V. 8. v. 1. 324.—J.&V. v. 1. Appendix 9.—Ibid. v. 2. 267.—Gr. v. 2. 100.—K.&R. v. 1. 480.—W. v. 4. 615.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the clerks of the respective counties in this state, from time to time, shall provide fit and convenient books for the registering of all mortgages of any lands, tenements or hereditaments, situated within their respective counties; in which register shall be entered the names of the mortgagers and mortgagees, the dates of the respective mortgages, the mortgage money, the time or times when payable, the description and boundaries of the lands, tenements or hereditaments mortgaged, the times when such mortgages are registered, and a minute of the certificate of the proof or acknowledgment thereof hereinafter mentioned; to which register all persons whomsoever at proper seasons may have recourse, And it is hereby made the further duty of the clerks of the respective counties in this state, when registering a mortgage, also to record at length the special power of sale, if any be contained therein, for

Mortgages to be registered.
K. and R. v. 1. 480
W. v. 5. 341
4
3 John Rep. 510
2 and 3 Ann. c. 4—5 ib. c. 18
6 ib. c. 35—7 ib. c. 20
3 Geo. 2 c. 8
Powell on Mortgages
934, 636, 640

[* An *unregistered Mortgage* takes preference to a *subsequent* docketed judgment.—4 John. Rep. 216.—As to the power of sale, &c. 1 Caines' Cas. in Error. 1, 73, 112. 2 ib. 66, 124, 200, 301.—Powell on Powers, 4.—3 Atk. 714.—1 Vez. 306.—2 P. Will. 120.—5 Vez. jun. 678.—2 Caines' cas. in error, 66.—As to mortgages generally, 1 John. ca. 81.—3 ib. 322.—1 John. Rep. 580.—2 ib. 75, 84, 490, 510, 573, 595.—3 ib. 471.—4 ib. 41, 186, 215, 216.—6 ib. 290.—7 ib. 217, 278, 858, 376.—8 ib. 96, 153, 163, 198, 257, 487.—9 ib. 126, 129, 591.—10 ib. 32.]

which service the said clerks are hereby respectively allowed to demand and receive, over and above the fee allowed by law for registering a mortgage, the like rate of compensation which is allowed them for recording a deed; and that if any clerk shall neglect or refuse to do the duty required of him by this act, he shall answer to the party injured all damages which shall happen by reason of such neglect or refusal.

II. *And be it further enacted*, That every mortgage being proved or acknowledged according to law, and such proof or acknowledgment certified in like manner, may be registered as aforesaid in the city or county in which the lands, tenements or hereditaments so mortgaged are situated: and in case of several mortgages of the same premises, or any part thereof, the mortgage or mortgages, which shall be first registered as aforesaid, shall have preference in all courts of law and equity according to the times of the registry of such mortgages respectively: *Provided*, The mortgage or mortgages so to be preferred, be made bona fide and upon good and valuable consideration: *And further*, That no mortgage nor any deed, conveyance, or writing in the nature of a mortgage, shall defeat or prejudice the title or interest of any bona fide purchaser of any lands, tenements or hereditaments, unless the same shall have been duly registered as aforesaid.

III. *And be it further enacted*, That every deed conveying a real estate, which by any other instrument or writing shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage and be deemed and adjudged to be liable to be registered as other mortgages are by virtue of this act; and that the person or persons for whose benefit such deed shall be made, shall not have the advantages given by this act to mortgages, unless every instrument and writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage or conditional deed, be also therewith registered in substance as in case of a mortgage.

IV. *And be it further enacted*, That whenever any mortgage so registered, shall be redeemed or discharged, and a certificate thereof signed by the mortgagee or mortgagees, his or their executors, administrators or assigns, in the presence of two or more witnesses, and proved or acknowledged in the same manner as the execution of such mortgage is above directed to be proved or acknowledged, and such proof or acknowledgment also certified in like manner, be produced to the clerk of the city or county in which the same is registered, such clerk shall enter in the said book or register of mortgages, a minute of such discharge and certificate, which minute shall be deemed and taken to be a full and absolute bar to the first entry of such mortgage or mortgages, and it shall not be necessary for the said clerk on entering such minute, or on registering any mortgage as aforesaid, to record or register at length the certificate of the proof or acknowledgment thereof.

V. *And be it further enacted*, That no sale of any lands, tenements or hereditaments, made or to be made in due form of law by any mortgagee or others thereunto authorised by special pow-

Also the power of sale

Where there are several mortgages, the first registered to have preference
K and R v 1
481 see 2
4 John Rep 216
7 Vin. Abr. 53,
54—3 Eq. ca. aux. 684
Cowp. 380, 718
[The doctrine of tacking mortgages not applicable to registered mortgages]
1 Caimes' cas. in error, 115]

Absolute deeds in terms, yet subject to a defeasance, shall be registered as mortgages.
K and R. v 1
481 § 3
2 John. Rep. 295
Or no benefit to be derived from such deeds as mortgages.

Discharges of mortgages to be entered in the register of mortgages, being first duly proved.
K and R. v 1
481 § 4
6 John Rep. 200
1 Caimes' cas. in error, 73

No sale under a mortgage to be defeated.

K and R. v 1
481 § 5
2 Calmes's ca.
in error, 124
Provide.

Further pro-
viso.

All sales under mortgages to be at public vendue, the power to sell being first recorded.
K and R. v 1
481 sec. 6
Sess. 32 c 83
W v. 5 467
Notice how and when to be given and published.
7 John. Rep 217

Proof of notice of sale how made
W v 5, 341
Sess 31. ch 185
References to
§ 78.

Affidavits of notice of sale before whom to be made
W v 5, 341
§ 2
Sess 31, ch. 156

er for that purpose, from any person entitled to the equity of redemption therein, shall be defeated to the prejudice of any bona fide purchaser thereof, in favor or for the benefit of any person claiming such redemption in equity: *Provided*, That nothing herein contained shall be construed to prejudice any other mortgagee of the same premises or any part thereof, whose title accrued prior to such sale, or any creditor to whom the mortgaged premises or any part thereof, were before bound by any judgment at law or decree in equity. *And provided also*, That nothing herein contained shall operate to secure any such purchaser under any power executed since the nineteenth day of March, in the year one thousand seven hundred and seventy-five, or hereafter to be executed for the purposes of such sale, unless the party executing the same be of the age of at least twenty-five years.

VI. *And be it further enacted*, That all such powers to mortgagees, made or to be made, authorising sales in fee, shall be acknowledged or proved and recorded, together with the certificate of such proof or acknowledgment, as deeds and conveyances usually are, before the conveyances for the sale be executed; and every such sale shall be at public auction or vendue, and public notice shall be given thereof by advertisements, one copy thereof to be inserted and continued at least once a week for six successive months previous to the sale, in one of the newspapers published in the county where the mortgaged premises lie; and if no newspaper be published in the said county, then and in that case the notice aforesaid shall be published in one of the newspapers in the county nearest to the mortgaged premises where a newspaper is printed; and another copy thereof to be fixed upon the outward door of the court-house of the city or county in which the said premises or the greater part thereof are situate.

VII. *And be it further enacted*, That in every case where the sale of mortgaged premises in virtue of a special power for that purpose contained in the mortgage, has taken place or may hereafter take place, an affidavit stating the publishing of the advertisement of sale in a newspaper, and made by the printer of the newspaper, and also an affidavit stating the fixing of a copy of the advertisement upon the outward door of the court-house, and made by the person who fixed the same upon the said door; and also an affidavit stating the circumstances respecting the sale of the mortgaged premises, and made by the person who acted as auctioneer at the sale and certified and recorded as hereinafter directed, or the record of either of the said affidavits, shall be received in every court of law or equity in this state, as *prima facie* evidence of the facts in such affidavit set forth.

VIII. *And be it further enacted*, That the person making either of the said affidavits shall make the same before one of the justices of the supreme court of this state, or a master in chancery for this state, or before one of the judges of the court of common pleas of the county in which the mortgaged premises shall lie; and such justice, master in chancery or judge, is hereby required to take the said affidavit and to subscribe his name to a certificate underneath the same, purporting that the person making the affidavit had appeared before him and made oath to the same.

IX. *And be it further enacted*, That in case application shall be made to the clerk of any county, where the mortgaged premises shall lie to record either of the said affidavits, certified and subscribed as aforesaid, then and in such case the said clerk is hereby required to record in his register of mortgages, the said affidavit at full length, together with the certificate of the justice master in chancery, or judge, annexed to the same; for which service the said clerk is hereby allowed to demand and receive the like rate of compensation which is allowed him for recording a deed.

Affidavits of notice of sale may be recorded.
W v S, 34: 63
Sess 31, ch 186

X. *And be it further enacted*, That no title to mortgaged premises derived from any sale made in virtue of a special power for that purpose in the mortgage contained, shall be questioned, impeached or defeated, either at law or in equity, by reason that the mortgaged premises were purchased in by the mortgagee or his or her assignee, or by his, her or their legal representatives, or for his, her or their benefit or account: *Provided always*, That the sale was in every other respect regular, fair, and with good faith.

Mortgagee may purchase etc.
Sess 3, ch 156 § 3
3 Vez. Jun. 70
1 ch ca 100
1 Vern. 484
ca. temp. King
1561—1 Vez. 9
1 Vez Jun 215
5 Vez, Jun 678
to 682, 707.
Co. Litt. § 68
3 Calver's ca in error. 139
Mortgages to the state may be registered in the secretary's office.
W v S, 90
Sess 30 ch 74, § 1

XI. *And be it further enacted*, That all mortgages already executed, or which may hereafter be executed to the people of this state, may be registered in the office of the secretary of this state, the same being first proven in the manner directed by this act, and every such registry shall have the like force and effect as if the same had been registered in the city or county where the lands described in every such mortgage is situated.

XII. *And be it further enacted*, That the secretary of this state shall procure fit and convenient books for the registering of the mortgages of lands, tenements and hereditaments, executed to the people of this state: and in registering every such mortgage, the said secretary, shall conform to the directions contained in the first section of this act.

The secretary of state to procure books for the purpose.
W v S, 90
Sess 30, ch 74, § 2

XIII. *And be it further enacted*, That the certificate of the treasurer of this state, for the time being, countersigned by the comptroller, setting forth that the whole principal and interest due on any of the said mortgages are paid, shall be a sufficient warrant to the secretary or to any of the clerks of counties within this state to cancel of record any of the said mortgages which may have been recorded in their respective offices.

Treasurer's certificate of discharge of mortgages to the state, sufficient to be recorded.
W. v. S. 90.
Sess. 30 c. 74 § 3

XIV. *And be it further enacted*, That all mortgages already executed or hereafter to be executed to the people of this state, may be foreclosed, by giving notice in the manner prescribed by this act; and every foreclosure made as aforesaid shall be an absolute bar of the equity of redemption, and shall have the like effect, as if any of the said mortgages had been foreclosed in the court of chancery by a decree against all parties in interest.

Mortgages to the state may be foreclosed.
Supply bill of 1807, § 27
W. v. S. 348

XV. *And be it further enacted*, That whenever lands are sold and conveyed, and a mortgage is given by the purchaser at the same time to secure the payment of the purchase money, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser.

Mortgage given to secure the purchase money of lands, takes precedence to a judgment.
W. v. S. 254.
Sess. 25, c 99

An ACT to regulate Weights and Measures.

Passed March 19, 1813.

[*Rev. ed.* 56.—S.&L. v. 1. 57.—V. S. v. 1. 58.—J.&V. v. 1. 111.—*Ibid.* v. 2. 300.—Gr. v. 1. 76.—K.&R. v. 1. 38.—W. v. 3. 472.—*Ibid.* v. 5. 466.]

One beam,
weight and
measure es-
tablished, etc.
R.&R. v. 1. 34
Sen. 7. c. 25. §1
Arisia. Pan.
etc. §. H. 3. st. 1
Com. 100. de
Fonder 31. Ed.
1.—Judic. Pil-
ler. §. H. 3. st. 6
M. C. 9. H. 3. c. 23
14 Ed. 3. st. 1. c.
12.—35 Ed. 3.
st. 5. c. 10.—27
Ed. 3. st. 1. c. 10.
13 H. 3. st. 1. c. 9
18 H. 3. c. 4
1 H. 5. c. 10
6 H. 6. c. 8
11 H. 7. c. 4
23 H. 8. c. 4
16 Car. 1. c. 19
23 Car. 2. c. 8

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That there shall be one just beam, one certain weight and measure, for distance and capacity, that is to say: avoirdupois and troy weights, bushels, half bushels, pecks, half pecks, and quarts, and gallons, half gallons, quarts, pints and gills, and one certain rod for long measure, according to the standard in use in this state, on the day of the declaration of the independence thereof; and that the standard of weights and measures now in the office of the secretary of this state, which is according to the standard of the court of exchequer, in that part of Great-Britain called England, shall be and is hereby declared to be and remain the standard for ascertaining all beams, weights and measures, throughout this state, until the congress of the United states shall establish the standard of weights and measures for the United States.

Secretary of
state ex-officio
state sealer,
and 3 assist-
ants to be ap-
pointed
Sen. 37. ch. 1. §1
51 H. 3. st. 6
23 & 33 Car. 2
c. 12
51 Geo. 3. c. 17
Where to re-
side

County sealers
to be appoint-
ed, etc.

II. *And be it further enacted*, That the secretary of this state, for the time being, shall *ex-officio* be the state sealer of weights and measures; and that there shall be three assistant state sealers, to be appointed from time to time as occasion may require, by the person administering the government of this state, by and with the advice and consent of the council of appointment, to continue in office during the pleasure of the said council; one of which assistants shall reside in the city of New-York, one in the city of Albany, and one in the county of Oneida; and that there shall be one county sealer of weights and measures, in each county in this state, to be appointed by the board of supervisors of the respective counties, at their annual meeting in October, to continue in office during pleasure; and one town sealer of weights and measures in each town in this state, to be elected at the annual town meetings, who shall continue in office for one year, and until another shall be chosen in his stead.

Certain stand-
ards of weights
and measures
to be procur-
ed, etc.
References
supra

III. *And be it further enacted*, That it shall be the duty of the secretary of this state, within nine months after the passing of this act, in addition to the weights and measures already provided by law, and now remaining with the said secretary and the assistant state sealer, in the county of Oneida, to procure at the expence of this state, so many weights, measures and beams, as shall make out four complete standards of weights and measures, both of liquid and dry measures, and avoirdupois and troy weights, with proper beams, and standard brass rods of long measure; one complete set to be retained in his office, as a principal state standard, and one other set of the said standards to be delivered to each of the assistant state sealers, taking their receipts respectively therefor; and the comptroller is hereby directed to audit the account of the secretary for his expenses in procuring the said additional standards of weights, measures and

Comptroller
to audit ex-
pense thereof

beams, and draw his warrant for the amount on the treasurer, who is hereby directed to pay the same out of any monies in the treasury not otherwise appropriated.

IV. *And be it further enacted*, That the several state standards of weights, beams and measures, shall be made of iron, brass, or copper, as the secretary shall direct; and the several county standard weights and measures, shall be made of such materials as the several boards of supervisors shall direct; and the several town standard weights and measures shall be made of such materials as the supervisors of each town shall direct.

V. *And be it further enacted*, That the said county sealers of weights and measures, shall, at the expense of the respective counties, for which they are elected, within six months after being notified of their respective appointments by the clerks of the several boards of supervisors, whose duty it shall be to give such notice, and after receiving from their respective county treasurers, by order of the said board, so much money as may be necessary for the purpose, procure a complete set of the said standard weights and measures, for the use of their respective counties; and every such county sealer shall forthwith, after having procured such standard, deliver to the clerk of the board of supervisors a statement in writing of the expense thereof, and that such standard is in his possession, and that the several town sealers of weights and measures, shall, at the expense of the respective towns within six months after their appointments, and after having received sufficient money for the purpose, procure a complete set of the said standard weights and measures, for the use of the respective towns; and having procured the same, shall deliver to the clerk of the town, to be filed in his office, such statement in writing as is before specified.

VI. *And be it further enacted*, That the letters N. Y. shall be impressed on all the state standard weights, measures and beams, and on the several county standard weights, measures and beams, such other device in addition as the said secretary shall direct for each county; which device shall be recorded in the secretary's office, and a copy thereof delivered by the secretary to each of the assistant state sealers, and the several town standard weights, measures and beams, shall be impressed by the county sealer in which such town shall be situate, with such other device, in addition to the state and county device, as the board of supervisors shall direct, for the several towns in their respective counties; which several town devices shall be recorded by the clerks of the several boards of supervisors, in a book to be kept for that purpose; and that such clerk shall deliver a copy of such record to the county sealer.

VII. *And be it further enacted*, That it shall be the duty of the assistant state sealers to compare their standard weights and measures with the principal state standard once in fourteen years; and that the several county sealers shall compare their standard weights and measures with one of the state standards once at least in seven years; and the several town sealers shall compare their town standards with the county standard once at least in three years; that before either of the sealers of weights and mea-

Of what materials standards of weights, beams and measures to be made

Sess. 27, c. 1 § 2
8 H 6 c 5
11 H 6 c 8
7 H 7 c 4
11 H 7 c 4
12 H 7 c 5

Duty of county sealers in procuring standard, etc.
Sess. 27 c. 1 § 4
14 H 3 st 1 c 12
34 Ed 3 c 6
7 H 7 c 4, and references *supra*

Expense thereof how paid

Letters and devices to be impressed on standards.
Sess. 27, ch. 1, § 5

Duty of assistant state sealers.

Sess. 27, ch. 1, § 6
Of county and town sealers.

Sealers to take
an oath.

sealers, who shall be appointed by virtue of this act, shall enter on the duties of his office, he shall take and subscribe an oath or affirmation before one of the justices of the supreme court, or one of the judges of the court of common pleas, or justice of the peace, of the county wherein such sealer is resident, well and truly, according to the best of his skill and ability, to perform the duties enjoined on him by this act; and that every assistant state sealer shall cause a certificate of the oath by him taken to be filed in the secretary's office; and every county sealer and town sealer shall in like manner, cause such certificate as aforesaid to be filed in the clerk's office of their respective counties.

Oaths where
filed.

Fees of seal-
ers.

Sec. 27. ch. 1. § 7

VIII. *And be it further enacted*, That each of the sealers of weights and measures within this state, shall be entitled to receive for his services, in sealing and marking measures and beams, which shall from time to time be brought to him for that purpose, twelve and an half cents, and for every weight and every small liquid measure, three cents, over and above a reasonable compensation for making them conform to the standard established by this act.

Duty of coun-
ty clerks in
delivering the
standards, &c.
Sec. 32 c. 80. § 4
W. v. S. 466.

IX. *And be it further enacted*, That it shall be the duty of the clerks of the several counties, to deliver to the respective county sealers of weights and measures heretofore appointed, or hereafter to be appointed, the standard brass yard measure which shall have been received by such clerks from the secretary of this state for the use of the said counties.

Surveyors of
land to take
an oath as to
his land mea-
sure.
Sec. 32 c. 80. § 4
W. v. S. 466.

X. *And be it further enacted*, That no surveyor shall give evidence in any cause pending in any of the courts of this state, or before arbitrators respecting the survey or measurement of lands, unless such surveyor shall make oath, if required, that the chain or measure used by him in surveying or measuring such lands was conformable to the standard measure of this state.

Duty of seal-
ers on resign-
ing or remov-
ing away.

XI. *And be it further enacted*, That whenever either of the assistant state sealers of weights and measures shall resign or remove from the cities of New-York or Albany, or the county of Oneida, or whenever any of the county or town sealers shall resign or remove from the counties or towns in which they were respectively appointed, it shall in that case be the duty of the person so resigning or removing, to deliver to his successor in office, all the standard beams, weights and measures, in his possession; and in case of the death of any sealer of weights and measures, it shall in like manner be the duty of his executors or administrators to deliver to the successor, to be appointed, all the said standard beams, weights and measures, in the possession of their testator or intestate, at the time of his death; and in case of neglect or refusal to deliver such standard entire and complete, the successor in office may maintain an action on the case against the person so removing or resigning, or against such executors or administrators, and recover double the value of such standard, or such parts thereof as have not been delivered to the said successor in office, with costs of suit; and in every such action, if judgment shall be rendered for the plaintiff, he shall recover double costs; one moiety of which may be retained by the person so recovering, and the other moiety shall be by him ap-

To deliver to
their successor
the standard
beams, &c.

In case of ne-
glect, the suc-
cessor may
sue therefor,
and recover
double costs.

plied to the purchase of such standard beams, weights and measures as may not be delivered over as aforesaid.

XII. *And be it further enacted*, That if any person or persons shall, after one year from the passing of this act, use any weights, measures or beams, in weighing or measuring, which shall not be conformable to the standard of this state, whereby any purchaser of any commodity, or article of trade or traffic, shall be injured or defrauded it shall be lawful for the person so injured or defrauded to maintain an action on the case against the offender, in any court having cognizance thereof; and if judgment shall be rendered for the plaintiff, he shall recover treble damages against the defendant with costs of suit.

Frauds in trading, etc. in weights and measures not conformable to law, 51 H. 3. st. 6. 34 Ed. 3. c. 5. Subjects party to a suit by the injured person. And treble damages shall be recovered.

CHAP. XIX.—(R.L.)

An ACT concerning Escheats.

Passed February 25, 1813.

J.J. & V. v. 1. 40, 65, 70, 170, 322.—Gr. v. 1. 26, 43, 139, 276.—Ibid. v. 2. 200, 423, 424.—Ibid. v. 3. 293 § 10.—K. & R. v. 1. 310.—W. v. 3. 647.—W. v. 5. 352.]

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That in cases where administration hath been or shall be granted to any person not the widow of, or not of kin to the intestate, and no person shall, within one year after granting the same, appear to claim the personal estate of such intestate as next of kin, if the administrator shall neglect or refuse to pay the amount thereof, after deducting the debts and funeral charges of the intestate into the treasury of this state, for the benefit of those who may thereafter appear to be entitled to the same, it shall then be the duty of the attorney-general to cause such administrator to be cited to exhibit a just and true inventory, and render an account of the administration of the goods, chattels and credits of such intestate, unless such administrator shall have before exhibited such inventory, and then only to render an account of the administration as aforesaid; and the judge of the court of probates or surrogate before whom such administrator shall be cited shall thereupon examine and settle such account, and after deducting all debts and funeral charges of the intestate shall order the administrator to pay the balance to the treasurer of this state for the purposes aforesaid; but no commission whatsoever shall, in such case be allowed to such administrator on such account, and in case any such administrator shall neglect or refuse to exhibit such inventory or to render such account or to pay the amount of the estate of such intestate to the treasurer as aforesaid, it shall then be the duty of the attorney-general to cause a suit to be brought for and on behalf of the people of this state against such administrator in any court of record for the sum so ascertained by the judge of the court of probates or surrogate or in the court of chancery for an account of the estate of the intestate and to compel payment of the same into the treasury as aforesaid, and also to cause suits to be brought upon the

Administrator when to pay surplus estate into the treasury K. & R. v. 1 310 § 1 Mode of compelling administrator to pay 1 J. & V. 2. c. 17 3 Bl. Com. 494 St. de Scac. 51 H. 3. st. 5 St. de Escheator 29 Ed. 1 18 Ed. 1 st. 1 18. Geo. 3. c. 60 11 & 12. W. 3. c. 4 And vide references ut supra

Persons entitled to such surplus how to obtain it

bond given by such administrator upon obtaining the letters of administration; and if such administrator shall be found in default and a judgment or decree be given or obtained against him in any such suit, he shall pay costs therein to be taxed to the attorney-general, and the monies recovered in every such suit, and upon such bonds, shall be paid into the treasury of this state for the purposes aforesaid, and if any person at any time thereafter shall claim any part of the money so paid into the treasury, such person may present a petition to the chancellor stating the claim and praying an order to the treasurer to pay the money, a copy of which petition shall be served upon the attorney-general, who shall put in an answer to the same, and the chancellor shall thereupon examine the said claim and the allegations and proofs, and if he shall find that such person is entitled to any money so paid into the treasury he shall by an order direct the comptroller to issue his warrant to the treasurer for the payment of the same, but without any interest or costs to the person so entitled to it, which order shall be sealed with the seal of the said court of chancery, and be signed by the chancellor and countersigned by the register or assistant register of the said court, and shall be sufficient voucher for such warrant of the comptroller.

Where no heir or devise capable of taking lands to which the state K & R. v. 1 311 § 3 W. v. 3. 647 1 Journ. ca. 399 3 lb. 109 3 John. Rep. 1 4 lb. 75 7 lb. 214 28 Ed. 1. c 18 36 Ed. 3 c 13 1 H. 8. c 10 8 H. 6. c 16 18 H. 6. c 67 Co. Litt. 13 32 H. 8. c 6 33 H. 8 c 20 1 W & M. st. 2 c 2 34 Ed. 3. c 13 23 H. 6. c 16

II. *And be it further enacted*, That whenever the attorney-general shall be informed or have reason to suspect that any person has died seised of any real estate within this state, without making any devise thereof, and leaving no heir capable of inheriting the same, he shall cause a writ to be issued out of the court of chancery and directed to the sheriff of any county in this state, in the form following: "The people, to the sheriff of

greeting: Because we are informed that A. B. died seised of divers lands, tenements and hereditaments in our county of without making any devise thereof, and leaving no heir capable of inheriting the same, We command you that by the oath of twelve good and lawful men of your county you diligently enquire what lands, tenements and hereditaments the said A. B. was seised of at the time of his death, of any and what estate of inheritance and when he died, and whether he made any and what devise thereof, and whether he left any heir, and if he did who is his heir and what is the clear yearly value of such lands, tenements and hereditaments; and the inquisition which you shall take thereof do you send under your seal, and the seals of those by whose oath you take the same inquisition, before us in our chancery without delay, wheresoever the said court shall then be, together with this writ."

Notice of inquisition to be published, etc W. v. 3. 352 sec. 31. c. 173 sec. 1 [Vide references supra]

Judgment, when to be given

III. *And be it further enacted*, That it shall be the duty of the attorney-general in every case where an inquisition shall be taken pursuant to this act to cause notice to be given thereof in all the newspapers in which the acts of the legislature are directed to be printed for the space of eight weeks successively, requiring the persons claiming any interest in the lands described in such inquisition to appear and traverse the said inquisition within twenty days after the expiration of the time limited in the said notice: *And further*, That no judgment shall be given upon the

said inquisition until after the expiration of the said twenty days.

IV. *And be it further enacted*, That in all cases in which any such inquisition shall be taken if the real estate to be affected thereby shall be possessed by any person residing on, or improving the same, it shall be the duty of the attorney-general to cause notice of such inquisition to be served on each of the tenants occupying such real estate at least forty days before any judgment shall be entered on such inquisition; which notice shall set forth the taking of such inquisition and that judgment will be rendered thereon at the time limited in such notice, unless such tenants shall appear and traverse the same; and if any of the occupants above mentioned or any other person aggrieved thereby shall traverse the inquisition taken on the writ by this act directed to be issued, and if any issue shall be joined thereupon, the record thereof shall be sent into the supreme court, who shall direct the same to be tried at the next or any subsequent circuit court or sittings to be held in and for the county in which the lands to be affected thereby are situate, and on such trial it shall be incumbent on the prosecutor in behalf of the people of this state, to prove all such matters as are requisite in judgment of law to establish any such escheat without prejudice to the defendant from the finding of the inquest in any such case; and if the judgment shall be given thereupon for the people of this state, then a writ shall be issued out of the same supreme court to the sheriff of the same county, commanding him to seize and take the lands, tenements and hereditaments whereof the person named in such inquisition shall be found to have died seised as aforesaid into his hands; but if no such traverse shall be taken to such inquisition before the end of the next term after the return of the same inquisition then such writ shall immediately thereafter be issued out of the court of chancery commanding the sheriff to seize and take the same lands, tenements and hereditaments, and upon the return of such writ of seizure the attorney-general shall cause the record and proceedings to be exemplified under the seal of the court out of which the same writs of seizure issued, and deposit such exemplification in the office of the secretary of this state, and the commissioners of the land office shall thereupon cause the said lands, tenements and hereditaments to be sold at public vendue by the surveyor-general who shall give at least six weeks previous notice of the time and place of such sale by publishing the same in the newspaper printed by the printer to this state, and in one of the newspapers printed in the city of New-York; and the surveyor-general shall upon such sale give the purchaser a certificate, containing the name of the purchaser and a description and the bounds of the lands, tenements and hereditaments purchased, and the price to be paid for the same; and the purchaser shall thereupon and within thirty days thereafter pay to the treasurer of this state the sum mentioned in such certificate, and the treasurer shall thereupon endorse a receipt for the same upon such certificate, and upon producing the same certificate and receipt to the commissioners of the land office they shall cause letters patent to be issued to such purchaser for the

Tenants occupying the land to be served, with notice, W. v. S. 352 Sess. 31. c. 173 sec. 2 40 days before judgment. Contents of notice

Occupants and parties aggrieved may traverse inquisition K. & R. v. 1. 311 § 2

Traverse how tried 34 Ed. 3. c. 13 36 Ed. 3. c. 13 2 & 3 Ed. 6 c. 8

Evidence on behalf of the people W. v. S. 352 Sess. 31. c. 173 sec. 3

Sess. 24 c. 73 § 2 Writ of seizure when to be issued etc K. & R. v. 1 311 sec. 2

Upon return of writ, proceedings to be exemplified & how disposed of

Commissioners of the land office to sell the lands at vendue, on notice given Upon the sale a certificate to be given

Purchaser's how & when to pay

Letters patent when to issue to him

lands, tenements and hereditaments in the same certificate mentioned; which letters patent shall be in such form as the said commissioners shall direct, and shall grant and convey an estate of inheritance in the said lands, tenements and hereditaments to such purchaser and to his heirs and assigns forever; and upon the production of such letters patent to the sheriff he shall deliver the possession of the said lands, tenements and hereditaments to the purchaser thereof.

Sheriff, when
to deliver pos-
session to him

Compensation
to jurors and
witnesses etc
W. v. s. 247
Sess 30, c. 163
sec 29

How to be au-
dited and paid
W v s 647

Proceedings
in cases of for-
feitures, on
convictions of
treason
K&R. v. 1. 313
§ 3
26 H. S. c. 13
§ 66 Ed 6 c 11

Personal es-
tate so forfeit-
ed, to be sold

V. *And be it further enacted*, That jurors and witnesses in every case of escheat shall be entitled to the like compensation as is authorised by law for attending in causes commenced in the supreme court, and it shall be the duty of the comptroller to audit the account of the attorney-general for the amount of juror's fees, sheriff's fees and clerk's fees that have or may accrue in cases of escheat, and to draw his warrant on the treasurer for the same, and the accounts for the service of subpoenas and the attendance of witnesses on behalf of the people of this state in the like cases shall be audited by the court of exchequer, and paid by the treasurer on the warrant of the comptroller.

VI. *And be it further enacted*, That the like process and proceedings, as near as the circumstances of the cases will admit shall be had in all cases of real estates to be forfeited for treason, or upon any outlawry for the same, and in all cases of forfeiture of personal estate, for treason, the attorney-general may sue for and recover the same for and in behalf of the people of this state, and shall pay the amount thereof, when recovered into the treasury, and in cases where it shall be necessary the attorney-general may cause a writ to be issued out of the court of chancery to the sheriff of any county, to inquire what goods and chattels any person convicted of treason or outlawed for the same had at the time of such conviction, and to seize and safely keep the same and return the inquisition into the court of exchequer where any person agrieved thereby may traverse the same; and if judgment shall be given upon such traverse for the people of this state, or if such inquisition shall not be traversed before the end of the term in which it shall be returned then a writ shall be issued out of the court of exchequer to the sheriff, commanding him to sell the said goods and chattels, and to bring the monies arising from the sale thereof into the said court for the use of the people of this state.

CHAP. XIII.—(R.L.)

An ACT concerning Oaths.

Passed February 25th, 1813.

[J.&V. v. 1. 134. *et seq.*—Ibid v. 2. 215.—Gr. v. 1. 15, 101, 103, 163, 186, 230, 243, 321, 325, 318, 375, 320, 365, 442—Ibid v. 2. 45, 46, 47, 168.—Ibid v. 3. 334.—K&R. v. 1. 401.—W. v. 5. 504.]

Governor and
other officers
to take an
oath of abju-
ration and al-
legiance.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That every person who shall hereafter be elected a member of the senate or of the assembly of this state, before he takes his seat, and every person who shall hereafter be elected governor or lieutenant-governor of this state,

and every person who shall hereafter be appointed to any office, civil or military, before he enters upon the execution of his trust or office, shall and hereby is required to take and subscribe the following oath, that is to say : " I, do solemnly, without any mental reservation or equivocation, swear and declare, (or affirm, as the case may require) that I renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and that I will bear faith and true allegiance to the state of New-York, as a free and independent state."

II. *And be it further enacted*, That every person who shall hereafter be elected governor or lieutenant-governor of this state, and every president of the senate who shall at any time administer the government of this state, shall also, before he enters upon the execution of his trust or office, take the following oath of office, to wit : " I, elected governor, (lieutenant-governor or president of the senate, as the case be) of the state of New-York, do solemnly swear and declare, that I will in all things, to the best of my knowledge and ability, faithfully perform the trust reposed in me as governor, (lieutenant-governor or president of the senate, as the case may be) of the state of New-York, by executing the laws, and maintaining the peace, freedom and independence of the said state, in conformity to the powers delegated unto me by the constitution of the said state."

III. *And be it further enacted*, That the president of the court for the trial of impeachments and the correction of errors, and every member of the said court, and all judicial officers in this state hereafter to be elected or appointed, shall also, before they enter upon the execution of their respective offices, severally take and subscribe the following oath, to wit : " I, do solemnly swear and declare that I will, to the best of my knowledge and ability, execute the office of (here describe the office,) according to the constitution and laws of the state of New-York, in defence of the freedom and independence thereof, and for the maintenance of liberty and the distribution of justice among the citizens and inhabitants of the said state, without any fear, favor, partiality, affection or hope of reward."

IV. *And be it further enacted*, That every person who shall hereafter be appointed secretary of this state, shall also, before he enters upon the execution of his office, take and subscribe the following oath, to wit : " I, secretary of the state of New-York, do solemnly swear and declare, that I will in all things, according to the best of my knowledge and ability, justly and honestly keep the records, parchments, papers and instruments of writing committed unto me, and which shall be from time to time hereafter committed unto me, by virtue of my said office, and in all things, to the best of my knowledge and understanding, faithfully and honestly perform the duty of my said office of secretary, and the trust reposed in me, without favor or partiality."

V. *And be it further enacted*, That every person who shall hereafter be appointed sheriff or coroner of the city and county of New-York or Albany, or of any other county in this state, their deputies

K&R. v. 1. 401
W. v. 4, 332
Sess. 29, c. 3
18 Ed. 3. st. 4,
5-14 Ed. 3. st.
1, c. 5.-20 Ed.
3, c. 3.
1 EL. c. 1.-5 EL.
c. 1.-27 EL. c. 12
3 Jac. 1, c. 1. 4.
7 Jac. 1, c. 6
1 W.&M. c. 6
18
1 Ann. st. 1, c.
22.-8 Anne 15
13 W. 3, c. 6
6 Ann. c. 7.
6 Geo. 3, c. 43
1 Blk. Com.
244
Oath of office
of governor,
lieut. gov. and
president of
senate.
K&R. v. 1. 402
§ 2
Oath.
Oath of all ju-
dicial officers.
K&R. v. 1. 403
§ 3
Oath.
Oath of secre-
tary of state.
K&R. v. 1. 402
§ 4
Oath.
Oath of sheriff
coroner, chief
marshal of
Hudson, and
their deputies

K. & R. v. l. 402
§ 5

Oath.

and the chief-marshal of the city of Hudson, and every of their deputies, except such persons as may at any time be deputed by any sheriff to do a particular act only, shall also, before he, they or any of them, shall enter upon the execution of the said office, take the following oath, to wit: "I, _____ sheriff, (or coroner, or chief-marshal, or deputy-marshal, or under sheriff, or one of the deputies of the sheriff, as the case may be) of the city and county of New-York, (or Albany, or Hudson, or of the county of _____, as the case may be) do solemnly swear and declare, that I will well and truly serve the people of the state of New-York, in the office of sheriff, (or coroner, or chief-marshal, or deputy-marshal, or under sheriff, or one of the deputies of the sheriff, as the case may be) of the said county, (or city and county, or city, as the case may be) during my continuance therein, and will faithfully and truly execute, or cause to be executed, [the words, or cause to be executed, to be omitted in the oath to be administered to an under sheriff, or deputy-sheriff, or deputy-marshal,] all writs and precepts which shall be delivered to me, or come to and remain in my hands for that purpose, according to the best of my knowledge, skill and judgment; and that I will not corruptly, or unjustly use or exercise the said office during the time that I shall remain therein, neither will I directly or indirectly accept, receive or take, by any colour, means or device whatsoever, or consent to the taking any manner of fee or reward whatsoever, of or from any person or persons whomsoever, for the summoning, impanelling or returning of any inquest, jury or *tales*, in any court for the people of this state, or between party and party, other than such fees or reward as now are or hereafter shall be allowed by law for the same; and that I will not directly or indirectly exact or demand any manner of fee or reward whatsoever, from any person or persons whomsoever, for serving or returning of any writ, precept or process whatsoever, or for any other service whatsoever in my said office, other than such fees or reward as now are or hereafter shall be allowed by law; but that I will demean myself honestly and impartially in all things that shall belong to the duty of my said office, according to the best of my knowledge, skill and ability."

Oath of attor-
gen. and of
district attor-
neys.
K. & R. v. l. 403
§ 6

Oath.

VI. *And be it further enacted*, That every person who shall hereafter be appointed attorney-general of this state, or district-attorney, shall, before he enters upon the execution of his office, take and subscribe the following oath, viz: "I _____ appointed attorney-general, (or district-attorney,) do solemnly swear, that I will in all things, to the best of my knowledge and ability, perform the trust reposed in me."

Oath of surro-
gates.
K. & R. v. l. 403
§ 7

Oath.

VII. *And be it further enacted*, That every surrogate hereafter to be appointed, shall, before he enters upon the execution of his office, take and subscribe the following oath, viz: "I, _____ surrogate of the county of _____ do solemnly swear, that I will in all things well and faithfully execute the office of surrogate of the said county, according to the best of my knowledge and ability."

Oath of regis-
ters and clerks
of courts.

VIII. *And be it further enacted*, That every person who shall hereafter be appointed register or clerk of any court, or clerk of

any city or county in this state, shall also, before he enters upon the execution of his office, take the following oath, to wit: "I, ^{K&R. v 1, 403 § 8} ^{Oath} register, (or clerk, or one of the clerks,) of the court of (or clerk of the county of or of the city and county of or of the city of as the case may be) do solemnly swear and declare, that I will justly and honestly keep the records, parchments, papers and writings committed to me by virtue of my said office, and which shall be from time to time hereafter committed unto me; and in all things, to the best of my knowledge and understanding, faithfully and honestly perform the duty of my said office, and the trust reposed in me, without favour or partiality."

IX. *And be it further enacted*, That all other ministerial officers hereafter to be appointed, shall also, before they respectively enter upon the execution of their respective offices, severally take and subscribe the following oath, to wit: "I, ^{Oath of all oth. r ministerial officers, K&R. v 1, 403 § 9} ^{Oath} appointed to the office (here insert the officer's title of office) do solemnly promise and swear, that I will in all things, to the best of my knowledge and ability, faithfully perform the trust reposed in me."

X. *And be it further enacted*, That the lieutenant-governor of this state, the chancellor of this state, the judges of the supreme court, secretary of this state and attorney-general, the mayors, recorders and clerks of the several cities, the judges and clerks of the respective counties of this state, shall, by virtue of their several offices, be commissioners for administering oaths to every person who shall hereafter be appointed to any office civil or military; and the said commissioners, after administering the said oath or oaths, shall cause the same to be subscribed with the proper names and hand-writing of the person or persons taking the same, on rolls to be provided for that purpose, containing proper captions, with the said oaths written at length thereon, which rolls shall be deposited as follows, to wit: Those containing the oaths and subscriptions of any governor, lieutenant-governor, president of the senate, member of the senate or assembly, chancellor, judge of the supreme court, judge of the court of probates, or any officer of either of the said courts, or attorney-general, or secretary of this state, or district-attorney, or military officer whose office shall extend into more than one county, shall be deposited and kept in the office of the secretary of this state; and those containing the oaths and subscriptions of the respective county officers, both civil and military, shall be deposited and kept in the office of the clerk of the same county. ^{Oaths before whom to be taken. K&R. v 1, 403 § 10 W. v 5, 504 Secs. 32, c 141} ^{Rolls how disposed of}

XI. *And be it further enacted*, That if any officer, civil or military, in this state, shall execute his office without having first taken and subscribed the oaths or affirmations required by law, and the oath to support the constitution of the United States, such officers shall thereby forfeit their said offices respectively, and be removed therefrom; and such neglect or omission is hereby declared to be a misdemeanor, indictable and punishable by fine and imprisonment. ^{Officers acting without taking the oaths required, to be punished. K&R. v 1 404 § 11}

XII. *And be it further enacted*, That the clerk of each county in this state shall, on or before the fifteenth day of January in

None of those officers who have and have not taken the oaths.
K&R. v 1, 404
§ 12

every year, at the expense of this state, give information to the person administering the government of this state, of such persons as have taken the oaths required by law to be taken, and of such as have neglected to take the same, and also of all vacancies in such county, occasioned by death, removal or otherwise, in any civil office.

Penalty for not returning the rolls.
K&R. v 1, 404
§ 13

XIII. *And be it further enacted*, That if any commissioner herein before named, shall not make a return of the rolls, containing the names of all such officers to whom he shall have administered the oaths of office, within six months after he shall have administered the said oaths, every such person neglecting to make such return as aforesaid, shall forfeit to the people of this state the sum of twenty-five dollars, to be sued for and recovered with costs of suit, before any court having cognizance of the same, by the clerk of the county in which the said person so making default as aforesaid shall reside, one moiety of which forfeiture, when recovered, shall, by the clerk, be paid into the hands of the treasurer of the said county, to be disposed of in such manner as the board of supervisors of the county shall direct; and it shall be lawful for the said clerk to retain the other moiety of the said forfeiture for his own use.

How sued for and applied.

The preceding section not to apply to county treasurers, town officers, etc.
K&R. v 1, 405
§ 14

Form of administering oaths in certain cases.
K&R. v 1, 405
§ 15
Gr. ed. 8.
Gr. v 1, 21

XIV. *And be it further enacted*, That nothing herein before contained shall be construed to extend to any county treasurer, supervisor, town clerk, commissioner of the highways, overseer of the highways, assessor, collector, constable, or other town officer.

XV. *And be it further enacted*, That it shall be lawful for every person empowered to administer an oath, to administer it in the following form to all persons who shall declare they have conscientious scruples about the present mode of administering oaths, by laying the hand on and kissing the gospels, to wit: The person swearing shall, with his or her hand uplifted, swear by the ever-living God, and shall not be compelled to lay the hand on or kiss the gospels; and oaths so administered shall be equally effectual, and expose such person to the like pains and penalties for wilful and corrupt perjury, as oaths administered in the usual form.

Persons who may affirm instead of swearing.
K&R. v 1, 405
§ 16.
S.&L. v 1, 216
v. S. v 1, 170,
180
Gr. v 1, 358

Affirmation.

XVI. *And be it further enacted*, That every person believing in the existence of a Supreme Being, and a future state of rewards and punishments, who shall have conscientious scruples against taking an oath, shall, in all cases where an oath is upon any lawful occasion to be administered, be admitted, instead of taking an oath, to make his or her solemn affirmation or declaration, in the following form, to wit: "You do solemnly, sincerely and truly declare and affirm," which solemn affirmation or declaration shall be equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely and corruptly affirming and declaring as aforesaid, shall incur and suffer the like pains and penalties as are or shall be inflicted on persons convicted of wilful and corrupt perjury.

Falsely affirming declared perjury.

Comm'n. of oyer and terminer when to be sworn.

XVII. *And be it further enacted*, That it shall not be necessary for any commissioner of oyer and terminer and gaol delivery, who at the time of acting as such shall hold any judicial of-

see in this state, to take any oath mentioned in this act, but every other person named as such commissioner shall, before he acts as such, take and subscribe the oath first mentioned in this act, and also the oath herein prescribed to be taken by judicial officers: *And further*, That no proceeding whatsoever before any commissioner named in any commission of oyer and terminer and gaol delivery, shall be void or in any manner impeached by reason that any commissioner therein named shall not have taken any oath in this act mentioned.

K&R. v. 1. 405
§ 17

Neglecting so to do, not to affect the proceedings of the court

CHAP. LIII.—(R.L.)

An ACT for the recovery of Debts to the value of Twenty-five Dollars.

Passed April 5, 1813.

[Br. Ed. 94.—*Vide* act for the settlement of Courts of Justice, Nov. 1, 1683.—S.&L. v. 1. 47, 357.—*Ibid.* v. 2. 169.—V. S. v. 2. 648.—J.&V. v. 1. 54, 61, 80, 215.—*Ibid.* v. 2. 155.—Gr. v. 1. 445.—*Ibid.* v. 3. 246.—K.&R. v. 1. 491.—W. v. 5. 375, 385, 568.]

Actions cognizable before a justice, and his jurisdiction in his civil capacity declared.

W. v. 5. 375
Sess. 31. c. 204

1 Calmes' Rep. 191

3 Ib. 129, 170, 171, 174

1 John. ca. 25, 130, 228, 333

2 John. Rep. 192, 195, 378

3 Ib. 437

5 Ib. 347

6 Ib. 332

7 Ib. 360

8 Ib. 412, 461

9 Ib. 135, 141, 366, 369

10 Ib. 106, 109

1 Jac. 1 c. 14

3 Jac. 1 c. 15

14 Geo. 2 c. 10

22 G. 2 c. 47

32 G. 2 c. 6

23 G. 2 c. 27

24 G. 2 c. 42

47

23 G. 2 c. 30,

33

24 G. 2 c. 16

25 G. 2 c. 34,

38, 43, 45

26 G. 2 c. 7

31 G. 2 c. 21, 24

27 G. 2 c. 10

28 G. 2 c. 38

3 G. 2 c. 19

4 G. 2 c. 40,

41

5 G. 2 c. 8, 9

6 G. 2 c. 0,

16, 20

10 G. 2 c. 20,

21 29

First process against freeholders and

I. BE it enacted by the people of the State of New-York, represented in Senate and Assembly, That all actions of debt, detinue, covenant, trespass on the case, and trespass, including trespass on any lands or other real estate, wherein the balance due or the damages or thing demanded, shall not exceed twenty-five dollars; and also all penalties not exceeding the said sum, imposed by the act, entitled "an act to lay a duty on strong liquors, and for regulating inns and taverns," and also all sums of money not exceeding twenty-five dollars, to be sued for and recovered in any court of record, by virtue of any statute of this state, as well by and in favor of executors and administrators as others, and as well against attornies and other officers of any court of justice of this state (except during the sittings of such court) as others, shall be cognizable before any justice of the peace of any city or county (the city and county of New-York excepted); and every such justice is hereby authorised to hold a court for the trial of all such actions, and to hear, try and determine the same, according to law and equity, and is hereby vested with all such power, for the purpose aforesaid, as is usual in courts of record in this state, and shall sign all process to be issued by him: *Provided always*, That no justice of the peace shall have cognizance of any action wherein the people of this state shall be concerned, or where the title to land shall in any wise come in question, (except as aforesaid) nor of any action of assault, battery, or imprisonment, or of slander, or malicious prosecution, nor of matters of account, where the sum total of the accounts of both parties proved to the satisfaction of the justice, shall, in the whole, amount to two hundred dollars, nor of any action to be brought against an executor or administrator, for any debt or demand due from the estate of any testator or intestate.

II. *And be it further enacted*, That the first process under this act, against freeholders and inhabitants having families (ex-

men of families to be by summons.

W. v. s. 376
Sess. 31. c. 204 § 3

How directed, and its nature. When returnable.

How served.

2 Caines' Rep. 96

3 Ib. 135, 219, 275

1 John. ca. 101, 343

1 John. Rep. 503, 504, 530

3 Ib. 192, 378

3 Ib. 147, 427, 431, 432, 435, 439

4 Ib. 117, 293

5 Ib. 353

6 Ib. 126

7 Ib. 19, 20, 38, 329

8 Ib. 383, 409, 406, 428, 437, 470

9 Ib. 140, 354, 346

How to be returned.

In case defendant do not appear, how to proceed.

How and when to examine the proofs &c. in that case.

10 John. Rep. 106, 138

When and how to give judgment.

Justice may try cause by agreement without process.

Warrant, contents of.

W. v. s. 376

Sess. 31. c. 204 § 3

Proceedings when defendant brought thereon before justice.

2 Caines' Rep. 134

3 John. Rep. 147

4 Ib. 352

6 Ib. 62

9 Ib. 140

10 Ib. 114

Warrant when to be issued on oath

W. v. s. 376

Sess. 31. c. 204 § 4

W. v. s. 568

Sess. 32. c. 186 § 1

2 Caines' Rep. 134, 245

3 Ib. 166

1 John. ca. 101

cept as hereafter is otherwise directed) shall be by summons, directed to any constable in the county where the defendant dwells, commanding him to summon the defendant to appear before such justice, at a time and place to be expressed in such summons, not less than six nor more than twelve days from the time of issuing such summons, to answer the plaintiff of the plea in the same summons to be mentioned, which summons shall be served at least six days before the time of appearance mentioned therein, by reading the same summons to the defendant, and delivering a copy thereof, (if required) if such defendant shall be found, and if not, by leaving a copy thereof at his or her house or place of abode, in the presence of some one of the family, of suitable age and discretion, who shall be informed of its contents; and the constable serving such summons shall, upon the oath of his office, return thereupon the time and manner he executed the same, and sign his name thereto; and in case the defendant does not appear at the time and place appointed in such summons, and it shall appear by the return endorsed thereon, that the summons was personally served; or if the defendant does appear on the return of such summons, the said justice shall then, or at such other reasonable time as he may appoint, not exceeding six days thereafter, proceed to hear and examine the proofs and allegations of the parties, and within four days thereafter give judgment thereon, agreeable to law and equity, with costs of suit; but if such summons was not served personally, and the defendant does not appear at the time and place appointed in such summons, nor shew good cause for not appearing, then the said justice shall issue another summons or warrant, against such defendant, at his option; but no person shall be proceeded against by summons out of the county in which he or she resides; and that whenever any parties agree to join an issue without process, the justice shall proceed to try the same as if process had issued.

III. *And be it further enacted*, That in all cases where a warrant shall issue, the constable shall be commanded to take the defendant, and bring him or her forthwith before such justice, to answer the plaintiff of the plea in the same warrant to be mentioned, and upon the defendant being brought before such justice, he shall proceed to hear and determine the cause in manner aforesaid; and if the justice who issued such warrant, shall on the return thereof, be absent, or unable to hear and try the cause, the constable serving the same, shall take the defendant before the next justice of the city or county, who shall take cognizance of and hear, try and determine the cause, as if the warrant had been issued by him.

IV. *And be it further enacted*, That if any person, or his or her attorney, applying for process, shall prove to the satisfaction of any justice, that the defendant is about to depart from the county, or that the plaintiff will be in danger of losing his or her debt or demand, unless the process against such defendant, being a freeholder or inhabitant having a family, shall be by warrant, such justice shall thereupon issue a warrant as above directed; and if the person applying for a warrant, be a non-resident, and

tenders to any justice security for the payment of any sum which may be adjudged against him, he shall be entitled to have a warrant in his favor against any person in the county in which such justice may reside; and on the defendant being brought before such justice on such warrant, he shall then, or within three days thereafter, unless the parties agree to allow a longer time, proceed to hear, try and determine such cause in the manner herein before directed; but in all other cases on the return of a warrant, if either of the parties shall require a longer time to try the cause, and will, if required, give sufficient security to appear and stand trial on such other day as shall be appointed, then such justice shall adjourn the trial of such cause to some future day, not less than three nor more than twelve days, unless the parties and justice shall otherwise agree; and if the adjournment is required by the defendant, he shall give sufficient security to appear on the day to which the cause is adjourned, and in default of such appearance to pay the debt, or damages and costs, in judgment shall be given against him or her, and for want of such security, the justice shall proceed to trial without an adjournment; and that the constable serving such warrant shall detain the defendant in his custody until discharged by due course of law: *Provided*, That in all cases where any application for a warrant shall be made, as provided for in this section, the person thus applying shall, by affidavit or orally, on oath, state the facts and circumstances within his knowledge, shewing the grounds of his, her or their application, whereby the justice may better judge of the necessity and propriety of issuing such warrant.

V. *And be it further enacted*, That in cases not provided for by the last section as aforesaid, if the defendant shall make oath that he cannot, for want of some material testimony or witness, safely proceed to trial, the justice shall in such cases postpone the trial for such reasonable time as will enable the defendant to procure such testimony or witness: *Provided*, That such time shall not exceed three months: *And provided also*, That such defendant, before he shall be entitled to have the trial postponed as aforesaid, shall give security to the said justice, to appear and answer the said action, and to pay the debt and damages, and costs, or render himself in execution in case judgment shall be given against him. *Provided also*, That in any action, to be brought by virtue of this act, by warrant or otherwise, if either the plaintiff or defendant shall request an adjournment, he shall not be entitled thereto, unless the party requesting an adjournment (after having seen the account or demand of the adverse party) shall, if required, exhibit his or her account or demand, or state the nature thereof as far forth as may be in his or her power, to the satisfaction of the justice before whom the cause is to be tried.

VI. *And be it further enacted*, That if the defendant, in any action to be brought by virtue of this act, hath any account or demand against the plaintiff, he may plead and set off the same against the debt or demand of the plaintiff; and if any defendant shall neglect or refuse so to do, such defendant shall forever thereafter be precluded from having any action against the plain-

7 John. Rep.
18, 381

8 John Rep.
301, 407, 437,
468

9 Ib. 133, 136
10 Ib. 114

Security to be
given by
plaintiff.

Justice to try
cause in three
days, unless
parties other-
wise agree.

When cause
may be ad-
journd longer
on a curity
given and how
if at defend-
ant's request
nature of se-
curity requir-
ed.

If none given
cause to pro-
ceed.

Constable to
detain defend-
ant till dis-
charged.

Proviso.

As to the na-
ture of plain-
tiff's oath on
procuring a
warrant.

When cause
to be adjourn-
ed on defend-
ant's oath.

W. v. S. 377
Sess. 31. ch.
204. § 5

1 John. Rep.
513

2 Ib. 383
3 Ib. 435

9 Ib. 364—vide
references to
preceding sec-
tions as to ad-
journment, &c.

Security to be
given by de-
fendant.

The party re-
quiring ad-
journment
first to pro-
duce his ac-
count or de-
mands, &c.

Defendant
may set off his
demands.

W. v. S. 377
Sess. 31. c. 204
§ 6

3 *Caines' Rep*
113
1 *John. Rep.*
26, 283
9 *Ib.* 137, 427
428, 433
5 *Ib.* 1:9
7 *Ib.* 21, 23
8 *Ib.* 390, 443,
453, 470
9 *Ib.* 332, 338
10 *Ib.* 108, 110
111
Having defend-
ant's rights
where balance
exceeds \$5
dollars.

Proceedings
on a plea of
title in actions
of trespass.
W. v. S. 378.
Sess. 31. c. 204
§ 7

Plea to be
signed and
countersigned
and delivered
to plaintiff.

2 *Caines' Rep.*
28
10 *John. Rep.*
283

Justice, before
he receive
plea of title to
grant security.

Provide.

Defendant in
the common
pleas may
shew that
plaintiff was
not in posses-
sion, &c.

Forms of con-
viction under
the excise or
avern act.
W. v. S. 378
Sess. 31. c. 204

tiff to recover the same or any part thereof: *Provided always*, That where the balance found to be due to the defendant shall exceed twenty-five dollars, in such case the justice shall enter judgment against the plaintiff for costs, and the defendant shall not be precluded from recovering the same account or demand against the plaintiff in any court of record having cognizance thereof: *And provided*, That nothing herein contained, shall authorise or require any defendant to set off any damages arising or accruing from any trespass done or committed by the plaintiff to the defendant, or any other demand, except such only as may arise on contract, either express or implied by law, but this exception shall not exclude any written evidence of debt, either with or without seal.

VII. *And be it further enacted*, That when in any action of trespass on any land or other real estate, any defendant shall justify on a plea of title, the defendant shall commit such plea of justification to writing, and having signed the same in the presence of such justice, shall deliver the plea to the justice, who shall then countersign the same, and deliver it to the plaintiff; and that it shall and may be lawful to and for such plaintiff to commence and prosecute an action for such trespass against such defendant, in the court of common pleas of the county in which such trespass shall have been committed; and if such plaintiff shall recover any damages in such action, the defendant shall be liable to pay to such plaintiff double costs; and on every trial to be had for such trespass, the plea signed by such defendant shall be conclusive evidence, that the defendant relied on his title to justify such trespass; and that every justice, to whom a plea of justification shall be tendered, shall before he shall receive such plea, exact from the defendant, together with one sufficient surety, a recognizance in the sum of fifty dollars, conditioned, that if such plaintiff shall commence a suit before the next court of common pleas, for the recovery of damages for such trespass, such defendant shall appear and put in special bail in such court, within twenty days after the first day of the then next term of the said court; and that in every case in which such plea shall be tendered, and the defendant shall not forthwith enter into such recognizance, the justice shall proceed in the same manner as if such plea had not been tendered: *Provided nevertheless*, That it shall be competent to such defendant, notwithstanding the said plea of title, to shew on the trial of any such cause, before any court of common pleas, that the plaintiff had not possession of, or title to the premises at the time such supposed trespass was committed.

VIII. *And be it further enacted*, That all convictions to be had before any justice as aforesaid, for offences against the act, entitled "an act to lay a duty on strong liquors, and for regulating inns and taverns," shall be drawn up in the following manner, viz: City of New-York, (or Westchester county, or other city or county, as the case may be) to wit: Be it remembered, that on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ A. B. of the city of New-York, (or of Bedford in the county of Westchester, or other city or town, or

county, as the case may require) merchant (or farmer, or other addition, as the case may require) (and adding) being an innholder or tavern keeper (if the case be so) is this day convicted before C. D. mayor (or recorder, or one of the aldermen, as the case may require) of the said city, (or one of the justices of the peace of the said county, as the case may require,) of having on the day of last, (or instant) at in the said city, (or county) sold by retail one quart (or other quantity) of rum, or other spirituous liquors,) without having such permit, or to be drank in his (or her) house or out house, yard or garden, without having entered into such recognizance as is mentioned in the act, entitled "an act to lay a duty on strong liquors, and for regulating inns and taverns," or, of not having in his (or her) house, two spare beds for guests, with good and sufficient sheeting and covering for such beds respectively, for the accommodation of travellers; (or) of not having good and sufficient stabling and provender, of hay and grain, if in winter, and if in summer, of hay or pasturage for four horses, or other cattle, more than his or their own stock, for the accommodation of travellers, according to the form of the act, entitled "an act to lay a duty on strong liquors, and for regulating inns and taverns," (or) of having on the day of last, (or instant) at in the said city (or county) sold one gill (or other quantity) of rum (or other strong liquor) to an apprentice (or servant, or slave) of knowing or having reason to suspect or believe him or her to be such, without the consent of his or her master (or mistress) against the form of the act, entitled "an act to lay a duty on strong liquors, and for regulating inns and taverns," (or) of having for the space of one month (or two or more months) neglected to put up and keep such sign up, as is required by the act, entitled "an to lay a duty on strong liquors, and for regulating inns and taverns." Given under my hand, the day and year first above written. And every such conviction shall and may be pleaded in bar to any other prosecution for the same offence.

IX. *And be it further enacted*, That in every action to be brought by virtue of this act, it shall be lawful for either of the parties to the suit, or the attorney of either of them, after issue joined (and before the court shall proceed to inquire into the merits of the cause) to demand of said court that such action be tried by a jury; and upon such demand, the said justice, holding such court, is hereby required to issue a venire, directed to any constable of the city or town where the said cause is to be tried, commanding him to summon twelve good and lawful men, being freeholders or freemen of such city, or being freeholders of such town where the said cause is to be tried, and who shall be in no wise of kin to the plaintiff or defendant, nor interested in such suit, to be and appear before such justice issuing such venire, at such time and place as shall be expressed in such venire, to make a jury for the trial of the action between the parties mentioned in the said venire; which constable shall, at the return of the said venire, return a panel of the names of the jurors he shall so summon by virtue thereof; and the name of each person so impanelled, shall be written on several and distinct pieces of pa-

6 John. Rep. 101

For selling without permit

or recognizance,

or not having beds and bedding,

or stabling or provender or hay or pasturage,

or selling liquor to servants or apprentices without master's permission,

or neglecting to put up a sign.

when and how a trial by jury may be demanded.

W. v. S. 379 Sec. 31. c. 286 § 9

Venire to be issued.

Nature thereof.

1 Calver's Rep. 801—2 Ib. 134, 373—3 Ib. 81, 140, 219.

1 John. Rep. 143—2 Ib. 151, 191, 194, 310, 386—3 Ib. 439, 416, 222, 414, 5 Ib. 111, 346, 6 Ib. 68, 338, 7 Ib. 32, 35,

36, 96, 179;
183, 198, 341.
§ 1b. 4 7, 442,
445, 460—9 1b
312

Ballots to be
drawn.

When six jurors
only may
be summoned.

Jurors oath.

Jury to sit to-
gether and
hear the evi-
dence in pub-
lic.

Witness's oath

Jury to be
kept together
till they agree
on their ver-
dict.

Constable's
oath to keep
the jury.

When jury
have agreed,
to deliver
their verdict,
and justice to
give judgment
and issue execu-
tion there-
on.

Witnesses and
jurors neg-
lecting to ap-
pear;
W. v. s. 390
Sess. 31. c. 304
§ 10
or appearing
shall refuse to
serve or testi-
fy, forfeit a
penalty.

per as nearly of one size as may be, and shall be delivered to the said justice before whom such action is to be tried, by the constable returning such panel, and shall, by the said constable, be rolled up, all as nearly as may be in one and the same manner, and put together in a box or some convenient thing; and on the trial of such cause, such justice, or such indifferent person as he shall appoint for that purpose, shall draw out six of the said papers, one after another; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number thereof shall be drawn as shall make up the number of six who do appear, after all legal causes of challenge allowed by the said justice, unless the said parties agree that the said constable shall summon six men, at his discretion; and the said six men so first drawn and appearing, and approved by the court as indifferent, shall be the jury who shall try the cause, to each of whom the said justice shall administer the following oath; "You do swear, in the presence of Almighty God, that you will well and truly try the matter in difference between plaintiff, and defendant, and a true verdict will give according to evidence." And after the said jury shall have taken the oath aforesaid, they shall sit together, and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence; and to each of the witnesses on the said trial, the justice shall administer the following oath, viz: "You do swear in the presence of Almighty God, that the evidence you shall give in this matter in difference between plaintiff, and defendant, shall be the truth, the whole truth, and nothing but the truth." And after hearing the proofs and allegations, the jury shall be kept together in some convenient place, until they all agree upon a verdict; and for which purpose a constable shall be sworn, and to whom the said justice shall administer the following oath, viz: "You do swear, in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn on this inquest together, in some private and convenient place, without meat or drink, except water; you will not suffer any person to speak to them, nor speak to them yourself, unless by order of the justice, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict." And when the jurors have agreed on their verdict, they shall deliver the same to the justice in the same court, who is hereby required to give judgment thereupon, and to award execution in manner hereafter directed: *Provided always*, That no oath of either party, or ex parte affidavit of any other person, shall be allowed or given in evidence in any such action, unless the parties agree to allow such evidence.

X. *And be it further enacted*, That every person subpoenaed as a witness, either in the county in which the justice resides, or the next adjoining county, or summoned as a juror, who shall not appear, or appearing, shall refuse to serve, or give evidence in such action, shall forfeit and pay for every such default or refusal, (unless some reasonable cause be proved on oath, to the satisfaction of the said court) such fine or fines, not exceeding the sum of ten dollars, nor less than sixty-two cents, as the said

court shall think reasonable to impose; and the said court is hereby authorised and required to issue a warrant to any constable, to levy the same of the goods and chattels of the offender, and for want thereof, to take and convey him or her to the gaol of the city or county wherein the offence shall have been committed, there to remain until he or she shall pay such fine, together with the costs attending the same; and the keeper of such gaol is hereby commanded to keep such offender in safe custody in such gaol, until such fine, together with the costs, shall be paid: *Provided always*, That no such fine or fines shall be imposed, unless such witness or juror shall be present before such justice at the time of imposing such fine, and have opportunity of being heard against the imposing thereof, or shall have been summoned, either in the name of the people, or the overseers of the poor, hereafter mentioned, to appear before a justice of the peace, to shew cause against the imposition of any such fine; all and every of which said fines, when recovered, shall be paid by the said court to the overseers of the poor, for the use of the poor of the city or town where the same shall be levied.

XI. *And be it further enacted*, That if the plaintiff in any such action, shall be non-suited, or discontinue, or withdraw his action, without the consent of the defendant, then judgment shall be given against such plaintiff for the costs accrued; or if he shall be found to be indebted to the defendant, then judgment shall be given against him for the debt or damages and costs, as the case may require; and whenever judgment shall be given against either plaintiff or defendant, the said court shall grant execution thereupon, directed to any constable within the same county, commanding him to levy the debt, or damages and costs, of the goods and chattels of the person against whom such execution shall be granted, his arms and accoutrements excepted, and to bring the money, at a certain time and place therein to be mentioned, before the justice who issued the execution, to render to the party who recovered the same; and if no goods or chattels can be found, or not sufficient to satisfy such execution, the party recovering the judgment may from time to time, renew such execution, or have further execution against the goods and chattels of the party against whom such judgment is recovered, or may bring an action of debt thereon, and shall further command the said constable, to take the body of the defendant, and convey him to the keeper of the common gaol of the county, there to remain till such execution shall be satisfied and paid; and it shall be the duty of each and every constable to endorse on every execution the time of levying the same: *Provided however*, That if the defendant shall, on the hearing of the cause, prove by his own oath or otherwise, to the satisfaction of such justice, that he has a family in this state for which he provides, and is not a freeholder, then the justice shall, at the time of issuing such execution, endorse such proof thereon, (except in the case of a trespass proved on the trial to have been wilful or malicious) and such defendant shall not be imprisoned on any execution so endorsed, if within one month after judgment, the said defendant shall pay to such constable, one dollar and fifty cents, if so much be due thereon; and the like sum in each and every

To be collected by warrant against the goods of offender, and if none, against his body.
If committed to remain in gaol till fine and costs are paid.

Proviso.

Offender to be summoned before warrant issues.

Fines how appropriated

Judgment against plaintiff for costs on non-suit or discontinuance
W. v. S. 380
Secs 31, ch. 304, § 11
And for debt or damages and costs, if balance found against him.

Execution to issue on any judgment.

Nature thereof.

Execution may be renewed, or may sue on the judgment.

Body of party may be taken in execution.

Constable to endorse time of levy.
Proviso.

When body of defendant exempt from execution.
3 John. ca. 84
2 John. Rep. 8, 9, 193
Cases excepted from exemption

Monthly instalments

If not paid, constable to proceed, as if defendant had not pleaded his exemption. Execution not to issue in 30 days in certain cases, unless oath of danger be made.

Then to issue immediately, unless party give security that he will pay it in 30 days.

Constable after goods seized on execution to give notice of sale, W. v. s. 381 Sess. 31, ch. 204 § 12. W. v. s. 440. Sess. 32 ch. 10 § 5 days before it is made.

To be sold to the highest bidder, etc. 3 John. Rep. 434—5 1b. 348. 7 1b. 338—8 1b. 60, 376, 436. 9 1b. 66, 146, 230, 282, 368. 261. 20 1b. 98. Body to be taken if no goods.

Freeholder to be committed till debt be paid. But a person having a family and no freehold, to be discharged in 30 days.

And without family in 60 days.

Previous Affidavit to be made.

mouth thereafter, until the execution and the constables fees are fully paid; but if such defendant shall neglect or refuse to make such monthly payment, it shall be the duty of such constable to proceed in such manner as if no such endorsement had been made on such execution: *And further*, That no execution of any judgment given by virtue of this act shall issue against any freeholder or inhabitant, having a family, and not entitled to such exemption, in less than thirty days after giving the said judgment, unless the party in whose favor judgment shall be given, shall make it appear to the satisfaction of the said justice, on his own oath, or the oath of some other person, that such plaintiff will be in danger of losing the debt or damages, if such delay be allowed; in which case the said justice shall issue execution immediately, as herein before directed, unless the party against whom such judgment shall be given, shall thereupon give security to the party in whose favor judgment was given, that he will pay the debt, or damages and costs, before or at the expiration of thirty days.

XII. *And be it further enacted*, That the constable, after taking such goods and chattels, into his custody, by virtue of such execution, shall immediately give public notice, by advertisement signed by himself, and put up at three public places in such city or town, where such goods and chattels shall be taken, of the time and place within such city or town, when and where they will be exposed to sale, at least five days before the time appointed for selling them, and therein describe the goods and chattels so taken; and at the time and place so appointed, and the said goods and chattels being present, shall expose them to sale at public vendue to the highest bidder, and pay the debt or damages and costs levied, to the justice who issued the execution, returning the overplus, if any, to the owner; and for want of goods and chattels whereon to levy, the said constable shall, according to the tenor of the said execution, take the body of the person against whom the said execution shall be granted, and convey and deliver him to the keeper of the common gaol of the city or county; and in case the person against whom such execution shall issue, be a freeholder, such keeper is hereby commanded to keep such person in safe custody, in the common gaol aforesaid, until the debt or damages, with costs, shall be fully paid; and in case any such person, having a family in this state, and not being a freeholder at the time of judgment rendered against him, or at any time thereafter, who now is, or shall be hereafter imprisoned under this act, and shall have remained in prison for more than thirty days, and any person not having a family, and not being a freeholder at the time of judgment rendered against him, or at any time thereafter, and who now is, or hereafter shall be imprisoned under this act, and shall have so remained in prison for more than sixty days, shall in either case be discharged from prison, on the executions issued under this act: *Provided always*, That before such person shall be entitled to his discharge, he shall make affidavit before one of the justices of the supreme court, or a commissioner authorised to take affidavits, to be read therein, or any of the judges or assistant justices of any court of

common pleas, or any justice of the peace (who are hereby required to take such affidavits,) that he comes within the provisions of this act, which affidavit shall be taken in the presence of the sheriff, or any one of his deputies, or gaoler, who are hereby required to attend for that purpose, when called on by such prisoner; and on producing and delivering such affidavit to the sheriff, or gaoler, of the county where the party shall be imprisoned, such party shall be forthwith discharged from prison; and in case the sheriff or gaoler shall refuse to discharge such person, in manner aforesaid, such sheriff or gaoler shall be subject to a penalty of twenty-five dollars, to be recovered by the party grieved, for his own use, with costs, in any court having cognizance thereof; and it shall be the duty of the sheriff, or gaoler, to file such affidavit in the office of the clerk of the county in which such party shall be imprisoned, whose duty it shall be to file the same without demanding or receiving any fees therefor; and if any sheriff or gaoler shall be sued or prosecuted for, or by reason of any discharge under this act, he may plead the general issue, and give this act, and the special matter in evidence, in full justification and defence: *Provided further*, That no discharge of any person under this act shall in any wise affect or prejudice any judgment or execution against the goods and chattels of such person: *And provided also*, That if any person shall wilfully, falsely and corruptly make an oath or affidavit, required by this act, he shall, on conviction thereof, in any court having cognizance thereof, suffer the pains and penalties inflicted on persons guilty of wilful and corrupt perjury, and shall also be subject to be taken in execution at the suit of the party in like manner, as if he never had been discharged under this act.

XIII. *And be it further enacted*, That in case any constable, to whom any execution shall be delivered, shall not, within twenty days after receiving such execution, levy the same on the goods and chattels of the person against whom such execution shall be granted, and in ten days thereafter pay the debt and costs, so levied, into the hands of the justice who issued the same; or, in case of his death or removal from office, to the person in whose favor the execution was granted; or if no goods or chattels can be found whereon to levy, then if the said constable shall not, if such execution require it, take the body of the person against whom such execution was granted, if to be found, and deliver him or her to the keeper of the common gaol of the county, within thirty days from the receipt of such execution as aforesaid; then, and in every such case, the said constable shall be holden to pay the amount of such execution, to be recovered by an action of debt, with costs, by the person in whose favor such execution was granted, in which case execution shall issue forthwith against such constable: *Provided*, That no constable shall be liable, under this clause, for not returning an execution on which the defendant's exemption is asserted, if he collects and returns the money payable by instalments, or returns the execution as to person and property not found.

Mature thereof.
To be taken in presence of sheriff, etc.
On producing such affidavit, sheriff to discharge party forthwith, under a penalty

Affidavit to be filed in clerk's office

Sheriff or gaoler sued for any act in virtue hereof, may plead the general issue

No discharge to affect the judgment, etc.

False swearing to the affidavit, declared perjury and subjects party to be again taken in execution.

Constable not levying on execution in 20 days,
W. v. S. 381.
Sess. 31. c. 204. § 18.
[Vide references to preceding sections.]

And in ten days after paying money to the justice, or if he be dead or removed to the plaintiff, or not taking the body whereon required;

declared liable for debt and costs.

No execution to be served unless by the time required by this act.
W. v. S. 382.
Sess. 31. ch. 204. § 13.

[*Vide References supra*]

Constable to serve process in person.
W. v. S. 382.
Sess. 31. c. 204. § 14.
But the justice may depute except to summon a jury.

Proceedings against joint debtors.

W. v. S. 382.
Sess. 31. c. 204. § 18

The joint debtor summoned or taken, shall answer.

1 John. ca. 20.
1 John. Rep. 276.

3 Ibid. 148.
4 Ibid. 23.

And judgment shall be against all.

No judgment under this act removable.

W. v. S. 383.
Sess. 31. c. 204. § 16.

Except by certiorari.

Affidavit to be made in 30 days after judgment, and presented to a judge, etc. in 90 days thereafter.

Before whom affidavit to be made.

Certiorari, otherwise issued, void.

Execution not to stay upon certiorari issued, etc.

XIV. *And be it further enacted*, That no constable shall levy or collect the amount of any executions issued by virtue of this act, unless the same be collected within the time specified by the preceding sections; or unless the said executions shall be renewed, except in the cases mentioned in the proviso in the preceding section.

XV. *And be it further enacted*, That when any process shall be issued by any justice, by virtue of this act, the constable, to whom such process shall be directed, shall proceed agreeably to this act, and execute such process in his own proper person, unless the justice who issues such process shall, at the request of the plaintiff, judge it expedient to depute some other proper person, who will voluntarily undertake to execute the same without fee or reward, but no person shall be so deputed to impanel or summon any jury.

XVI. *And be it further enacted*, That every summons or warrant, to be issued by virtue of this act, may issue against any joint debtors, in the same manner as against individual debtors; and in case the same be duly served, in manner herein before directed, upon either of such joint debtors, such joint debtor on whom the same shall be so served, shall answer to the plaintiff, and the judgment shall, in such case, be against the joint debtor or debtors on whom the same was so served, and against the other joint debtor or debtors named in such summons or warrant, in the same manner as if such process had been duly served on all such debtors: *Provided however*, That no execution shall issue against the body, or against any goods and chattels, the sole property of any debtor, on whom process was not duly served as aforesaid.

XVII. *And be it further enacted*, That no judgment, order, or proceeding whatsoever, to be had or made by virtue of this act, shall be removed by any writ of error or false judgment: *And further*, That no justice of the supreme court shall allow any certiorari, or other process, to remove the same, unless the party applying for such certiorari, shall, within thirty days after such judgment given, make affidavit, satisfying such justice of the supreme court, that there is reasonable cause for granting such certiorari for error in such judgment, which shall be specified in such affidavit, and within ninety days thereafter, cause such affidavit to be presented to such justice of the supreme court, and which affidavit may be made before any person authorized to take affidavits, to be read in the supreme court; and such affidavit shall be left with the justice of the supreme court, who may allow such certiorari; and, if any certiorari, or other writ, shall be granted or issued, otherwise than is above mentioned, the same shall be void: *And further*, That no execution, upon any judgment to be given by virtue of this act, shall be prevented or stayed by any certiorari, or other writ; in case the party in whose favor such judgment shall be given, shall give such security as may be satisfactory to the justice by whom such judgment shall be given, to restore the debt or damages for which such judgment shall be obtained, with the interest and costs, in case the same shall be reversed; and if any such judgment be removed into the supreme court, and be there confirmed, then

the party procuring such *certiorari* shall pay to the adverse party, all costs of defending such suit in the supreme court, and the party entitled to such costs shall and may have execution for the same, out of the said supreme court, against the body, or goods and chattels of the party who ought to pay the same; but, if such judgment shall be reversed, then the party procuring such *certiorari*, shall, in like manner, recover his or her costs: *Provided always,** That in all cases of judgment, removed by *certiorari* as aforesaid, the supreme court shall proceed and give judgment according as the very right of the case shall appear, without regarding any imperfection, omission, or defect in the proceedings, before the court below, in mere matters of form; and that so much of the act, entitled, "An act concerning amendments and jeofails," as may be applicable, shall be deemed at all times to apply as fully to judgments and proceedings under this act, as to judgments and proceedings in any court of record in this state: *And provided further,* That the omission or mis-recital of any oaths prescribed by this act, in the return of any justice to a *certiorari*, shall not be assigned for error, unless it shall be alleged in the affidavit, on which such *certiorari* issued, that exception to the form of any such oath as administered, shall have been taken at the trial.

XVIII. *And be it further enacted,* That in all cases where the judgment before any justice of the peace in any city or county of this state, shall be removed by *certiorari* to the supreme court, the plaintiff in error shall recover a sum not exceeding twenty-five dollars for costs, to be taxed on the reversal of any judgment so removed as aforesaid, and the clerks of the supreme court shall, in such case, receive for services done therein, no more than such fees as are allowed to clerks of courts of common pleas in analogous cases.

XIX. *And be it further enacted,* That nothing herein contained, shall extend to oblige any justice of the peace, being a member of the senate or assembly, or any judge of any county court, to take cognizance of any action by virtue of this act; but that they shall be at liberty, at all times, to act therein or not, at their discretion. And no justice of the peace, being an inn or tavern-keeper, or living in a house in which a tavern is kept, and no alderman of the city of Albany, shall try any cause by virtue of this act.

XX. *And be it further enacted,* That on the service of any *certiorari*, to reverse any judgment rendered in pursuance of this act, it shall be the duty of the party serving the same, to deliver at the same time to the justice a copy of the affidavit on which the *certiorari* was procured, and the justice shall make a special return as to all the facts stated in such affidavit, with a copy thereof, and annex the same to the writ of *certiorari*.

* [1 Caines' Rep. 486.—2 Caines' Rep. 110, 258, 383, 384.—3 Ibid. 83, 84, 106, 126, 140, 275.—2 John. Ca. 108.—1 John. Rep. 61, 493.—2 Ibid. 9, 182, 193.—3 Ibid. 146, 430, 436.—5 Ibid. 122, 234, 348, 350, 354.—6 Ibid. 5, 100, 168, 181, 195, 327.—7 Ibid. 16, 19, 24, 25, 95, 548.—8 Ibid. 72, 148, 149, 150, 360, 384, 407, 418, 421, 436, 442, 444, 445, 454, 462, 470.—9 Ibid. 66, 73, 78, 130, 136, 141, 142, 143, 144, 159, 229, 232, 244, 355, 356, 357, 358, 359, 362, 367.—10 Ibid. 99, 100, 101, 102, 114.]

Justice certificate how made evidence.
W. v. 5, 368
Sess. 32, c. 86
§ 2
3 John. Rep.
420
5 Ib. 351

XXI. *And be it further enacted*, That the official certificate of a justice of the peace, certifying the proceedings and judgment in every case by such justice rendered, with a certificate thereon, sealed by the clerk of the county where such justice shall reside, certifying that he whose signature appears on said exemplification, was, at the date of said judgment, a justice of the peace, shall be good and legal evidence in any court of justice in this state, to prove the facts contained in such exemplification, and nothing more.

Justice allowed 30 days to issue execution after removal, etc.
W. v. 5, 384
Sess. 31, c. 204
§ 20

XXII. *And be it further enacted*, That it shall be lawful for any justice of the peace who shall hereafter render any judgment in any cause, and who shall, before the collection of the money due thereon, be removed from office, to issue an execution thereon, at any time within thirty days after such removal, which execution shall, to all intents and purposes, be as valid and effectual as if such removal had not been made.

Attachment against estate of absent or absconding debtors how and when to be issued.
W. v. 5, 384
Sess. 31, c. 204
§ 21

XXIII. *And be it further enacted*, That it shall and may be lawful for any justice of the peace in any county within this state, (the city and county of New-York excepted) on application and satisfactory proof, by at least one disinterested witness, being offered by any creditor to such justice, that any person against whom he may have a demand not exceeding twenty-five dollars, hath departed, or is about to depart from such county, or is concealed within the same, with intent to defraud any of his or her creditors, or to avoid being personally served with any process to be issued by virtue of this act, to issue an attachment, directed to any constable as aforesaid, requiring him to attach the goods and chattels of such person, (except such goods and chattels as are exempt from execution) and the same safely keep to satisfy any judgment which may be rendered by such justice on such application, and to return the same within the times above limited for the return of a summons: *Provided however*, That before any such attachment shall issue, the justice shall take from such applicant a bond to the defendant, with one sufficient surety, in the sum of twenty-five dollars, conditioned to pay the defendant all damages and costs he may sustain by reason thereof, if no judgment shall be recovered against such defendant.

3 John. Rep.
380
20 Ib. 129

Proviso.

Security to be given by plaintiff to pay damages, etc.

Duty of constable on the attachment.
W. v. 5, 384
Sess. 31, c. 204
§ 22

XXIV. *And be it further enacted*, That it shall be the duty of such constable, on the receipt of any such attachment, to attach, take and safely keep, the goods and chattels of the person against whom the same may be issued, to satisfy such judgment as may be rendered in favor of such applicant, and also to leave a copy of such attachment at the dwelling-house or other last place of abode of the defendant: *Provided*, That such constable shall not remove or convey away any such property, if on attaching the same, a bond, with good and sufficient security, be given to the plaintiff, in the penalty of fifty dollars, conditioned that such goods and chattels shall be produced to satisfy any execution which may be issued on any judgment to be recovered on such application; and such constable shall, on the return day of such attachment, return the same to the justice who issued the same, and the manner of executing the same, together with such bond, whenever he may have taken one.

Proviso.

Goods not to be removed if security be given, and the nature thereof

And to be returned to the justice.

XXV. And be it further enacted, That on the return of the said attachment, the said justice shall proceed to hear, try and determine the cause between the said parties, in the same manner as on summons returned, personally served on the defendant as herein before directed: *Provided*, That no judgment to be rendered therein, in the event of the non-appearance of the defendant, or his not having been personally served with a copy of the attachment, shall work a wrong or injury to any claim or demand he may have against such plaintiff, but he may sue for and recover the same as if no such trial or judgment had been rendered against him.

XXVI. And be it further enacted, That no greater or other costs shall be allowed or taken in actions brought by virtue of this act, than the following:—Justices fees: a summons, nine cents; a warrant, twelve and an half cents; attachment, nineteen cents; judgment, twelve and an half cents; administering every oath, six cents; subpoena for each witness, six cents; an adjournment, nine cents; issuing the venire facias to summon a jury, nineteen cents; swearing the jury, twelve and an half cents; every execution, nineteen cents; every foreign witness attending and sworn, twenty-five cents per day, and every other witness attending and sworn, twelve and an half cents; constable or other proper officer, for serving a warrant or summons, notifying the plaintiff, or serving an attachment or execution, mileage for one mile or under, twelve and an half cents, for every mile more, six cents; copy of summons, nine cents: *Provided*, That on all precepts to be issued by virtue of this act, the fees for serving be computed only from the place of abode of the defendant, or where he shall be found, to the place where the precept is returnable; serving every execution, for every dollar, five cents; summoning every jury, thirty-seven and an half cents. Juror's fees: for all causes tried, twelve and an half cents each; when summoned and attending, and not trying the cause, six cents each; to the constable or other person serving subpoena, twelve and an half cents for each witness: *Provided*, That no party shall be entitled to fees for serving any subpoenas upon a greater number of witnesses than four in any one cause: *And provided also*, That the whole costs to be recovered or allowed in any action, shall not exceed the sum of five dollars, except in the case of the attendance of a witness from a foreign county, or in the proceeding by attachment, in which cases the addition of such witnesses' fees, and fifty cents for serving the attachment, may be allowed, and twelve and an half cents to the justice for taking a recognizance in case of attachment.

XXVII. And be it further enacted, That no justice of the peace or constable, serving the original or jury process in any cause, shall be permitted to appear and advocate for either party in any such cause.

XXVIII. And be it further enacted, That it shall be lawful for the justices of the peace in this state to issue subpoenas to compel witnesses to attend and give evidence before arbitrators: *Provided*, The party or parties shall prove to the satisfaction of such justice that a submission to arbitration has been made; and

On return of attachment justice to try cause.
W. v. 5, 385
Sess. 31. c. 204
§ 23
Proviso.

Judgment not to affect any of the defendant's demands

Fees allowed,
W. v. 5, 384
Sess. 31. c. 204
§ 24
To the justice

To foreign and other witnesses.
5 John. Rep. 381
9 John. Rep. 130
To the constable.

Proviso as to computation of mileage fees

To the jurors

To the persons serving subpoenas.
Proviso.
No fees for subpoenaing more than 4 witnesses.
9 John. Rep. 130

Costs not to exceed 5 dollars except in the case of foreign witnesses: and an attachment.

As to advocates, &c.
W. v. 5, 386
Sess. 31. c. 204
§ 26, 27
5 John. Rep. 385
9 Ib. 352, 354
10 Ib. 107.

Justices may subpoena witnesses before arbitrators.

W. v. 5, 386
Sess. 31. c. 204
§ 28

Proof to be made of the arbitration. Penalty on non-attending witnesses. How applied.

Witnesses subpoenaed W. v. 3, 386. Sect. 31, c 204 § 29

Subpoenas on foreign witnesses how to be served. W. v. 3, 386. Sect. 31, c 204 § 30

How proceeded against for non-attendance.

on default of attendance, such witness shall suffer the same penalties as are inflicted by this act, for default in attending a justice's court when subpoenaed, to be levied and collected in the same manner and for the same purpose, on complaint of any person aggrieved by such default.

XXIX. *And be it further enacted*, That any justice of the peace may issue subpoenas to compel witnesses to appear before any other justice and give evidence.

XXX. *And be it further enacted*, That whenever a subpoena is issued by any justice to compel the attendance of any witness from an adjoining county, it shall be lawful for any constable or other proper person of the county where such subpoena is issued, to serve such subpoena on such witness in any adjoining county; and if such witness shall make default of appearance, according to the direction of such subpoena, such defaulting witness may be proceeded against in the county where such witness shall reside, or where such subpoena was issued, in the same manner as is directed by the tenth section of this act, any law, usage or custom to the contrary notwithstanding.

[Note. In 1667, Town courts tried causes under 5l. Smith's history of New-York, 31. *in nota*. On the 1st Nov. 1683, *Monthly Courts*, in every town, for trial of causes to 40 shillings, were established by law—*vide* act "for the settlement of the courts of justice," section 1. The jurisdiction of the 40 shilling courts, before justices, &c. was farther regulated under an ordinance of the Governor and Council, May 15, 1699—*vide* Br. ed. *appendix*, and continued the same in 1709—*vide* Br. ed. 94. In 1759, the jurisdiction of those courts was extended to 1*l*. 5*s*. *vide* S.&L. v. 2. 169. In 1780, it was further extended to 100*l*. *vide* J.&V. v. 1. 54, 61. But on the 11th April, 1782, it was reduced, and limited to 10*l*. or 25 dollars—*vide* J.&V. v. 1. 80. at which sum it has ever since remained—*vide* J.&V. v. 1. 215. *Ibid* v. 2. 155. Gr. v. 2. 155. *et seq*. Before the year 1667, it would seem that all causes were tried before the Governor of the Colony *in person*—*vide* Smith's history of New-York, 31. London edition of 1757.]

CHAP. XC.—(R.L.)

An ACT relative to the Court of Exchequer.

Passed April 10, 1813.

[V. S. r. 2. 511.—Gr. v. 1. 200.—*Ibid* v. 2. 75. 331.—*Ibid* v. 3. 266, 303, 432, 498.—K.&R. v. 1. 444.—*Ibid* v. 2. 89.—W. v. 3. 235.—*Ibid* v. 5. 346.]

Court of Exchequer, where held K&R. v. 1 444. § 1.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the junior justice, or in his absence any other of the puisne justices of the supreme court shall, during every term of the said court or such part thereof as may be necessary at or near the place of holding the said supreme court, hold a court to be called the court of exchequer in the supreme court, which shall have power to hear and determine all causes, matters and things concerning forfeitures, whether for recognizances or for other cause, fines, issues amer-

[First organized in 1702, *vide* Smith's Hist. N Y 103, and under this state organized Feb. 9, 1788.—Gr. v. 1. 300]—*Vide* also *St. de Seconmaria*, 51 H. 3. st. 5—23 & 23 Car. 2 c 23—4 K.S. W&M. c 24—St. Westminster. 1—3 Ed. 1. c 19, 45—St. Rud. 10. Ed. 1—27 Ed. 1. st. 1 c 2—9 Ed. 3. st. 1. c 5.—16 Ed. 2—20 Ed. 3 c 2—37 Ed. 3 c 4—48 Ed. 3 c 9—1 R. 2. c 6—4 R. 2. st. 1. c 10, 13, 13, 14, 14—15 R. 2. st. 1. c 14—14 R. 2. c 11—5 H. 3. c 4—1 Ed. 4 c 2—7 H 4 c 3—33 H 6 c 3—11 H 15—1 H 8 c 4—33 H. 8 c 20—1 Jac. 1. c 26—13 & 14 Car. 2—c 11—13 & 14 Car. 2. c 21—19 Car. 2. c 12—20 Car. 2 c 2—28 & 10. W. 3. c 44—1 W&M. st. 2. c 1—38 & W&M c 28—10 & 11 W. 3 c 22—6 Ann. c 26—6 Geo. 2. c 6—23 Geo. 2. c 26—4 Geo. 3. c 10.

riaments and debts due or to become due to the people of this state according to law, and the course of the exchequer; and that it shall be lawful for such court to cause due process of law to be issued for levying the same, and all sheriffs, coroners and other officers to account for all monies received for the same, and to audit and settle such accounts and cause the same to be paid, and also upon good cause to remit any fine upon any juror or other officer of any other court for default of attending the same, or any forfeiture of any recognizance or any part of such fine or recognizance, and to discharge such recognizance according to equity and justice; *And further*, That it shall be lawful for such court in any case of difficulty to adjourn the same, and deliver the record thereof into the supreme court, where the same shall be heard and determined, and thereupon sent back to the said court of exchequer where execution thereof shall be done according to law.

II. *And be it further enacted*, That the justices of the supreme court, as often as may be necessary shall, by rule or order to be entered in the minutes of the said court, appoint, and the chief justice under his hand and the seal of the said court, commission an experienced and proper person to be clerk of the said court of exchequer, who shall hold his office during the pleasure of the said justices; and such clerk shall make and enter all minutes and records and issue all process as shall be directed by the said court, and shall receive and be accountable for all monies paid into the said court, and annually on the first day of January term shall make a just and true account upon oath, of all monies paid into the said court, and of all expenses by him paid for stationary and other necessities for his office, and produce the same to the said court to be audited and allowed, and within twenty days thereafter shall deliver a true copy of such account so allowed to the treasurer of this state, and pay to him the amount thereof after deducting his salary and the sums so allowed for necessities, upon pain of forfeiting his office besides being answerable for the monies so received: And that every such clerk so to be appointed before he enters upon the execution of his office shall take the oaths required by law to be taken by ministerial officers, and shall be allowed and paid the yearly salary of six hundred and twenty-five dollars for his services.

III. *And be it further enacted*, That as often as a clerk of the said court of exchequer shall be appointed, he shall, before he enters upon the discharge of any of the duties directed to be performed by him in and by this act, give a bond with two sureties to be approved by one of the justices of the supreme court to the people of this state in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, and shall file such bond in the office of the clerk of the supreme court.

IV. *And be it further enacted*, That the present seal shall continue to be the seal of the said court, and the description thereof deposited and recorded in the office of the secretary of this state shall there remain as a public record of the same, and that the process of the said court of exchequer shall be sealed with

Clerk of the court by whom and how appointed
K & R. v. 2
444. § 2
K & R. v. 2. 29

Penalty

To take an oath

Salary

To give a bond with surety
K and R. v. 1
444 sec 3

Seal of the court
K & R. v. 1.
444 sec. 4

Process how returnable

the said seal and signed by the said clerk and returnable before one of our justices of our supreme court in our court of exchequer (on such day as the said court shall next be held) at the city of Albany or New-York, as the case may be.

Neither judge
or clerk entitled to fees
K. and R. v. 1
444. sec 5

Clerks to re-
turn estreats of
fines, etc. into
the exchequer
K. & R. v. 1.
444. sec 6

[Vide referen-
ces to the stat-
utes *supra* to
see 1]

Penalty

Sheriffs and
other officers
to shew the
process of the
court or give
a copy gratis
K. and R. v. 1
444. sec 7

Penalty

Sheriffs, etc.
when and how
to render their
accounts
K. and R. v. 1
444 sec 8

23 & 23. Car 2
c 23
4 W & M. c 24
And referen-
ces *supra*
Quietus. when
it how grant-
ed
If sheriffs, etc.
neglect to pay
over monies
due
Execution to
issue against
them
Penalty for
not rendering
accounts
Execution in
that case how
and when to
issue

V. *And be it further enacted*, That neither of the justices who may hold such court, nor the said clerk shall take or receive any fee or reward for any services by them to be performed therein.

VI. *And be it further enacted*, That the clerks of the several courts of record in this state shall annually on the first day of October term make and deliver into the said court of exchequer a just and true account and estreat of all fines, forfeitures, issues and amerciaments imposed or adjudged, and of all recognizances forfeited before the first day of September preceding the first day of the said October term, in the respective courts of which they are clerks, together with the said recognizances, noting in every such account and estreat where any such fines, forfeitures, issues or amerciaments have been paid or the person committed for the same, to whom such payment or commitment was made, and what process has been issued, and to what officer, upon pain that every clerk who shall neglect his duty therein, shall forfeit his office and become answerable for all such fines, forfeitures, issues and amerciaments, and the amount of all such recognizances as such clerk shall neglect to give an account of, and estreat and deliver as aforesaid.

VII. *And be it further enacted*, That every sheriff and other officer to whom any process out of the said court of exchequer shall be directed and delivered shall, upon demand, shew the same and without any fee or reward deliver a copy thereof to the debtor or person against whom the same shall issue, and upon the receipt or levying of the money therein mentioned, acquit the debtor thereof and account for the same at his next account; and if any sheriff or other officer shall refuse so to do and be thereof convicted, he shall render to the party grieved treble damages, and be further punished by fine at the discretion of the court in which he shall be convicted.

VIII. *And be it further enacted*, That all sheriffs, coroners and other officers who shall have received or have become liable for any such fines, forfeitures, issues or amerciaments shall, annually on the first day of May or October term, render a just and true account thereof on oath to the said court of exchequer, and pay the balance if any found due thereon to the clerk of the said court, which account shall be audited and settled by the said court and on payment thereof by any sheriff, coroner or other officer, the said court shall grant a *quietus* or discharge for the same under the seal of the said court, and if any sheriff, coroner or other officer shall not pay such balance within twenty days after the auditing of his account, execution shall be issued against him for the same, and if any such sheriff, coroner or other officer shall refuse or neglect to render such account, such officer so neglecting or refusing, shall be liable to pay all such sums of money as shall or might have been received by him for any such fines, forfeitures, issues and amerciaments; and all such fines, forfeitures issues and amerciaments as shall have been imposed or adjudged

against such officer so neglecting or refusing in any court of record in this state, and execution shall thereupon be issued against such officer for the same, and if on auditing the account of any such sheriff, coroner or other officer, a balance shall be found in his favor, he shall be entitled to receive the same out of the treasury of the state, on a certificate under the hand of the judge, and under the seal of the said court: *And further*, Where a fine imposed on a grand juror, petit juror, or any officer, for neglecting or refusing to attend a court, shall have been levied by the sheriff, and by him paid to the clerk of the said court, and shall afterwards, on the petition of the defendant, be remitted by the said court, in whole or in part, such defendant shall, on a like certificate, be entitled to receive the sum so remitted out of the treasury of this state.

Fines remitted in certain cases how repaid

IX. *And be it further enacted*, That all executions in the said court of exchequer, for levying a fine imposed on any grand juror, petit juror, or other officer, for refusing or neglecting to attend a court, shall be against the goods of the defendant; and where there shall be more than one such defendant in any county, then instead of an execution against each defendant, it shall be sufficient if the names of the several defendants and opposite thereto the debts to be made of their goods respectively, shall be written on a schedule to be annexed to an execution, commanding the sheriff, or other officer, that of the respective goods and chattels of the several defendants named in such schedule, he cause to be made the several debts therein specified opposite to the names of the said defendants respectively; and the said execution shall contain a clause commanding the sheriff, or other officer, that at the time of levying the fines, he notify the defendants severally, that if they have sufficient matter to shew for remitting the fines levied from them respectively, that they appear in the said court of exchequer on the first day of the next ensuing term of the supreme court, or at the first circuit court to be held after such notice in the county where such defendants shall reside, to shew such matter; and the judges of the supreme court shall severally certify into the court of exchequer the allegations and proofs of the defendants, made before them in that behalf at the circuit courts held by them respectively; and that all other executions to be issued by the said court shall be against the body, lands and goods of the defendants, and shall command the officer to whom the said executions shall be directed to cause to be made of the goods and chattels of such defendants in his county the sum of money therein specified; and if sufficient goods and chattels of such defendant cannot be found in his county, then that he cause such sum of money to be made of the lands and tenements in his county whereof such defendant was seised on the day such sum of money became due, specifying the same in such execution, or at any time afterwards, in whose hands soever the same may be, and also that he take the body of such defendant and him in prison safely keep until he shall satisfy such sum to the people of this state; but if sufficient goods and chattels of such defendant shall be found, then that his land be not sold nor his body taken in execution for the same; and

Fines on jurors, &c. to be levied of their goods.
K&R. v 1. 444
§ 9

Executions how to be made

And to contain a clause notifying party to shew cause, &c.

Before whom and when.

All other executions to be against the body, lands and goods of the party.
Form thereof.

Except as to sheriffs or other officers and except as to heirs, executors and administrators.

when any such execution shall be issued against any sheriff, coroner or other officer while in office, or against any heir, executor or administrator, such execution shall not be against their bodies but only against the lands, goods and chattels of such sheriff, coroner or other officer, or of the ancestor, testator or intestate of such heir, executor or administrator.

The clerks of the oyer and terminer and general sessions of New-York to be paid out of the exchequer
Sess. 31. c. 163
§ 30
W. v. s. 340

X. *And be it further enacted*, That it shall be the duty of the court of exchequer to audit and pay from time to time out of the fines and forfeitures in the courts of oyer and terminer and gaol delivery and general sessions of the peace in the city and county of New-York, to the clerk of the said courts, his reasonable account for the fees arising on trials for capital or other offences, where the persons tried are in custody, or where by the judgment or order of the court the clerk cannot obtain his fees.

Constables and marshals in New-York to be paid a certain sum, &c.
W. v. s. 335.
Sess. 30. c. 70
§ 31

XI. *And be it further enacted*, That it shall be lawful for the sheriff of the city of New-York to pay out of the surplus monies arising from fines and penalties by him collected, to each of the constables and marshals of the said city the sum of seventy-five cents for each and every day they shall respectively attend any of the courts of said city or state, to be holden in said city, upon the certificate of the clerk of such court that they have duly attended the same.

Expenses for apprehending fugitives from justice from another state to be paid out of the exchequer,

XII. *And be it further enacted*, That in all cases where the executive of this state, in pursuance of the constitution of the United States, or any law of the United States, hath or hereafter shall demand from the executive authority of any state in the Union, any person as a fugitive from justice, it shall and may be lawful for the court of exchequer to audit the account of the person who hath been or may hereafter be deputed or employed by the executive of this state, to claim and demand such fugitive; and the said person, so deputed and employed, shall be entitled to receive out of the treasury of this state, the sum which the judge of the said court of exchequer shall, under his hand and seal, certify to be reasonably due to him for such service.

[*Note.*—By an ordinance of the Governor and Council of the 3d April, 1704, the Supreme Court were declared to have cognizance “of all pleas, civil, criminal and mixed, and to hear, try and determine the same, as fully and absolutely, to all intents and purposes, as her majesty’s Court of Queen’s Bench, Common Pleas and Exchequer, in her majesty’s kingdom of England, &c.” *Vide Br. ed. in appendix.*]

CHAP. XLIV.

An ACT to prevent Forgery and Counterfeiting.

Passed April 2, 1813.

[*Br. ed.* 52, 80.—*S. & L.* v. 1. 370.—*Ibid.* v. 2. 102.—*V. S.* v. 1. 268, 360, 482.—*Ibid.* v. 2. 591.—*J. & V.* v. 1, 211, 212.—*Cr.* v. 2. 41, 42.—*Ibid.* v. 3. 291, 364, 404.—*K. & R.* v. 1. 251, 252.—*W.* v. 5. 501.]

Altering, forging, etc. of records, deeds, notes, etc. or aiding therein, or uttering the same as legit.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That if any person shall falsely make, alter, forge or counterfeit, or cause or procure, to be falsely made, altered, forged or counterfeited, or willingly act or as-

list in the false making, altering, forging or counterfeiting any record, charter, deed or writing sealed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, or any note or specialty, for the payment of money, and expressed to be payable in any goods, wares or merchandizes, endorsement or assignment of any bill of exchange, or promissory note for payment of money, or any acquittance or receipt, either for money or goods, or any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt, for any note, bill or other security, for payment of money, or any warrant or order for payment of money or delivery of goods, whether such order purports to be the order of the owner of the goods or money specified therein, or of some person who claims an interest in the same, or of any other person with intention to defraud any person or body politic or corporate whatsoever, or shall utter or publish as true, any false, altered, forged or counterfeited record, charter, deed, or writing sealed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, or any note or specialty for the payment of money, and expressed to be payable in any goods, wares or merchandizes, endorsement or assignment of any bill of exchange, or promissory note for payment of money, acquittance or receipt either for money or goods, or any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill or other security for the payment of money, or any warrant or order for the payment of money or delivery of goods, whether such order purports to be the order of the owner of the goods or money specified therein, or of some person who claims an interest in the same, or of any other person, with intention to defraud any person or body politic or corporate whatsoever, knowing the same to be false, altered, forged or counterfeited, then every such person being thereof convicted, according to the due course of law, shall be deemed guilty of felony.

Declared felony.

II. *And be it further enacted*, That if any person shall forge or counterfeit, or be aiding or assisting in forging or counterfeiting any certificate or endorsement of the acknowledgment or proof of any deed or writing, made by any officer or other person duly authorised to make such certificate or endorsement by any law of this state now or hereafter to be made, or the certificate or endorsement of the recording of any deed or writing made by the secretary of this state, or by the clerk of any county duly authorised to make such certificate or endorsement by any law of this state, now or hereafter to be made, or shall knowingly utter any such forged or counterfeited certificate or endorsement as true, and be thereof convicted by due course of law, shall be deemed guilty of felony.

Counterfeiting any certificate of the proof or recording a deed or writing.
K. & R. v. 1. 252 § 2
References: An-
nals.
3 Geo. 2. c. 25
9 Geo. 2. c. 18
7 Geo. 2. c. 22

Or uttering the same as true, declared felony.

III. *And be it further enacted*, That if any person shall counterfeit, or cause or procure to be counterfeited, or aid or assist in counterfeiting any certificate, or other public security issued or to be issued, by the authority of this state, for payment of money, or acknowledging the receipt of money or goods, or any bill of credit heretofore issued by or under the authority of the legisla-

Counterfeiting public securities or uttering the same as true.
K. & R. v. 1. 252 § 3
References: sta-

38 Geo. 1. c 33
 3 Ann. c 21
 6 Geo. 1. c 4
 11, 18
 5 Geo. 1. c 14
 7 & 8 W. 3.
 c. 31
 3 W. 3. c 2
 3 Ann. c 13
 3 Geo. 1. c 8
 6 Geo. 1. c 4
 9 Geo. 1. c 8
 11 Geo. 1. c 17
 20 Geo. 2. c 3
 33 Geo. 2. c 1

Where a bill
 is altered, pre-
 sumption shall
 be that it is
 from a less to
 a greater sum.
 R. & R. v. 1.
 252 § 4
 References
supra.

Counterfeiting
 gold coin, etc.
 R. & R. v. 1. 353
 § 5
 9 Ed. 3. st. c 9
 27 Ed. 1. st. 3
 4 H. 7. c 18
 27 Ed. 3. 1
 3 Ed. 1. c 15
 35 Ed. 3. st. 5. c 2
 1 Mary st. 2. c 6
 1 & 2 Ph. &
 24. c. 11
 5 El. c 11
 14 El. c 3
 18 El. c 1
 3 & 9 W. 3.
 c. 26
 7 W. 3. c 3
 7 Ann. c 24. 25
 9 & 10 W. 3.
 c. 21
 15 Geo. 2. c 28
 W. v. 5. 501
 Sen. 32. c 138
 § 1
 4 H. 7. c 18
 14 El. c 3

The sale, ex-
 change, etc.,
 of a counter-
 feit note, sci-
 enter, with in-
 tent, etc.
 W. v. 5. 337
 Sen. 31. c 155
 § 5
 3. Geo. 3. c 46
 3 & 9 W. 3.
 c. 26
 The making,
 etc. of plates,
 for counter-
 feiting notes
 W. v. 5. 337
 Sen. 31. c. 155
 § 6
 References
supra.
 The posses-
 sion of coun-
 terfeit notes
scienter,
 with intent
 to pass, etc.
 W. v. 5. 337.
 Sen. 31. c 155
 § 7

ture of this state, or shall alter any such certificate or bill of credit, so that the same shall appear to be of greater value than the same was or shall be issued for or intended to pass for by the act in pursuance of which the same was or shall be issued, or shall utter, pass or give in payment, or offer to pass or give in payment, or procure to be uttered, passed or given in payment, any such counterfeited or altered certificate or bill of credit, knowing the same to be counterfeited or altered, then every such person being thereof convicted by due course of law, shall be deemed guilty of felony.

IV. *And be it further enacted*, That in all cases where any such certificate or bill of credit shall be charged to have been altered, and it shall appear to have been altered, the same shall be presumed to have been altered from a less to a greater value, sum or denomination, and the burthen of proving that the certificate or bill of credit charged to have been altered, was not altered from a less to a greater sum, shall be on the defendant charged with altering the same.

V. *And be it further enacted*, That if any person shall counterfeit, or cause or procure to be counterfeited, or aid or assist in counterfeiting any of the species of gold or silver coins now current or hereafter to be current in this state, or shall pass or give in payment, or offer to pass or give in payment the same, knowing the same to be counterfeit, then every such person being thereof convicted according to the due course of law, shall be deemed guilty of felony.

VI. *And be it further enacted*, That if any person shall have in his possession, or receive from any other person any counterfeit gold or silver coins of the species now current or hereafter to be current in this state, with intention to utter or pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or body politic or corporate whatever, knowing the same to be counterfeited, then every such person being thereof convicted, shall be deemed guilty of felony.

VII. *And be it further enacted*, That if any person shall sell or exchange, or offer for sale or exchange, or wittingly receive any forged or counterfeited promissory note, with intention to have the same uttered or passed, to defraud any person or body politic or corporate, then every such person being thereof convicted by due course of law, shall be deemed guilty of felony.

VIII. *And be it further enacted*, That if any person shall make or engrave, or cause or procure to be made or engraved, any plate for forging or counterfeiting any promissory note for the payment of money, in the name of any person or body politic or corporate, then every such person being thereof convicted by due course of law, shall be deemed guilty of felony.

IX. *And be it further enacted*, That if any person shall have in his possession, or receive from any other person, any forged or counterfeited promissory note for the payment of money, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or body politic or corporate whatsoever, knowing the

same to be forged or counterfeited, then every such person, being thereof convicted, according to the due course of law, shall be deemed guilty of felony.

X. *And be it further enacted*, That if any person shall have or keep in his custody or possession any blank or unfinished note, made in the form or similitude of any promissory note, for the payment of money, made to be issued by any incorporated bank in this state, or any other of the United States, with intention to fill up and complete such blank and unfinished note, or to permit, cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, to defraud any person or body politic or corporate whatsoever, the person in whose custody or possession such blank or unfinished note shall be found, being thereof convicted, according to the due course of law, shall be deemed guilty of felony.

References
supra
to John. Rep.
330

The possession of blank or unfinished counterfeited notes, with intent to fill up and pass, etc.
W. v. S. 338
Sess. 31. c. 133
§ 8
References supra.
S. & W. v. S. c. 30
Declared felony.

XI. *And be it further enacted*, That if any person shall have or keep in his custody or possession any plate for forging or counterfeiting any promissory note for the payment of money, in the form and similitude of any promissory note issued by any of the banks aforesaid, with intention to forge or counterfeit, or assist in forging or counterfeiting, or to permit, cause, or procure to be counterfeited, any promissory note, issued by any of the aforesaid banks, the person in whose possession or custody such plate shall be found, being thereof convicted, according to the due course of law, shall be deemed guilty of felony.

The possession of plates for counterfeiting notes, with intent, etc.
W. v. S. 338
Sess. 31. c. 133
§ 9
References supra.
Declared felony.

CHAP. XXIX.—(R.L.)

*An ACT declaring the Punishment of certain Crimes.**

Passed March 10, 1813.

[Br. ed. 52, 80.—S.&L. v. 1. 26, 339, 340, 370.—V. 8. v. 1. 241, 268.—Ib. v. 2. 771.—J.&V. v. 1. 294.—Ib. v. 2. 47, 127, 242, 245, 390.—Gr. v. 1. 336, 422.—Ib. v. 2. 7, 13, 41, 75, 76, 219.—Ib. v. 3. 291, 364, 404.—K. & R. v. 1. 253.—W. v. 5. 336, 501.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That every person who shall hereafter be duly convicted or attainted of any manner of treason against the people of this state, or of any kind of murder, or of aiding or abetting, or procuring any kind of murder to be committed, or of wilfully burning any inhabited dwelling house, shall suffer death for the same, and be hanged by the neck until such person shall be dead.†

Treason, murder and arson of an inhabited dwelling house, punishable with death.
K. & R. v. 1. 253.
§ 1.—Sess. 31.
ch. 133, § 1
W. v. S. 338

* The criminal code of this state was ameliorated, and state-prisons first directed to be established the 26th March, 1796.—*Vide* Gr. v. 3. 291.—Previous to this period most of the offences now punishable by imprisonment for life, were punished with death.

† *Calq. pol. Lond.*—25 Ed. 3. st. 5. c. 2.—12 H. 7. c. 7.—23 H. 8. c. 1.—25 H. 8. c. 3.—28 H. 8. c. 1.—1 Ed. 6. c. 12.—22&23 Car. 2. c. 7, 11.—43 El. c. 13.—1 Geo. 1. c. 48.—4 Geo. 1. c. 12.—9 Geo. 1. c. 22.—10 Geo. 2. c. 22.—27 Geo. 2. c. 15.—9 Geo. 3. c. 21.—12 Geo. 3. c. 24,

Robbery and burglary, punishable with imprisonment in state-prison for life.
R.S.N. v. 1.
 243, § 3.

II. *And be it further enacted*, That if any person shall be indicted of felony, for stealing of any goods or chattels, in any county of this state, and thereof be convicted or attainted, if it shall appear upon evidence, and be found by the jury, that the said goods or chattels were taken by robbery or burglary, or in any other manner, in any other county whereof if such person had been convicted by a jury of such other county, such person would by law be liable to imprisonment in the state-prison for life, at hard labor, or in solitude, or both, then and in every such case, judgment shall be given, that the said offender be imprisoned in the said prison for life, at hard labor, or in solitude, or both.*

Rape, sodomy, burglary, or of robbing a house while some person is there, and put in danger, &c. certain forgeries and malicious maiming, punishable with imprisonment for life.
K.C.H. v. 1. § 33.
 § 2

18 Fl. c. 7
 25 El. c. 6.
 267 Ed. c. 29
 8 El. c. 17.
 and as to forgeries, et c.
Calq. pol. Lond.
 220 & 23 Car. 2.
 c. 1.

Forging a deed, &c. or uttering the same counterfeit, &c. punishable with imprisonment for life, or some shorter period, in the discretion of the court.
W. v. 8. 237
Sess. 31. ch.
 285 § 3

References supra.
 3 John. c. 599
 223—1 John.
Rep. 330
 4 ib. 206
 8 ib. 236, 237
 6 ib. 320

III. *And be it further enacted*, That every person who shall hereafter be duly convicted or attainted of any manner of rape, or of the detestable and abominable crime against nature, committed with mankind, or beast, or of burglary, or of feloniously breaking into, or taking any goods or chattels from any dwelling house any person being therein and put in fear, or of robbing any dwelling house any person being therein, or of robbing any person in any place whatsoever, or of any offence specified in the second, third and fifth sections of the act, entitled "an act to prevent forgery and counterfeiting," or of any offence specified in the act, entitled "an act to prevent malicious maiming;" and every person who shall aid, abet, assist, counsel, hire, or command any person to commit any of the said offences, and be thereof duly convicted or attainted, shall be punished with imprisonment for life, in the state-prison.

IV. *And be it further enacted*, That every person who shall hereafter be duly convicted or attainted, of falsely making, altering, forging, or counterfeiting, or of willingly acting or assisting, in the falsely making, altering, forging, or counterfeiting, any record or charter, or any deed or will, affecting the title to real estate, or any promissory negotiable note, or bill of exchange, or endorsement, or assignment thereof, with intention to defraud any person, or body politic or corporate, whatsoever, or of uttering and publishing as true, any false, altered, forged, or counterfeited record, or charter, or any deed or will, affecting the title to real estate, or any promissory negotiable note, or bill of exchange, or endorsement, or assignment thereof, with intention to defraud any person, or body politic or corporate, whatsoever, knowing the same to be false, altered, forged, or counterfeited, and every person who shall aid, abet, assist, counsel, hire, or command any person, to commit any of the offences last mentioned, and be thereof duly convicted or attainted, shall be punished with imprisonment for life, in the state-prison, or for such term as the court having cognizance of the offence, may in their discretion deem proper.

V. *And be it further enacted*, That every person who shall hereafter be convicted or attainted of wilfully burning any dwell-

[* *Calq. pol. Lond.*—23 H. 8. c. 1.—25 H. 8. c. 1, 3—1 Ed. 6. c. 12.—5 & 6 Ed. 6. c. 9, 10.—18 El. c. 12.—S9 El. c. 15.—3 & 4 W. & M. c. 9.—10 & 11 W. 3. c. 23.—12 Ann. st. 1. c. 7.—24 Geo. 2. c. 45.—2 Geo. 2. c. 25.—31 Geo. 2. c. 22.]

ing house uninhabited, or any house of public worship, or other public building, or any barn, or any grist-mill, or of any offence specified in the first section of the act, entitled "an act to prevent forgery and counterfeiting;" the punishment whereof is not provided for in the last preceding section, or of any felony other than such as are herein above enumerated, and directed to be otherwise punished, and above the degree of petit larceny; and every person who shall aid, abet, assist, hire, or command any person to burn any inhabited dwelling house, or to commit any of the other offences in this section mentioned, and be thereof duly convicted or attainted, shall be adjudged by the justices who shall give judgment thereupon, on a consideration of all the circumstances of the case to imprisonment in the said prison for any term not more than fourteen years: *And further*, That every person who shall be a second time duly convicted or attainted of any of the said offences mentioned in this section, committed after such first conviction, shall be adjudged by the justices who shall give judgment thereupon, on like consideration of all the circumstances of the case, to imprisonment in the prison aforesaid for life.

Arson and certain forgeries punishable with imprisonment not exceeding 14 years.
K. & R. v. 1. 354.
§ 4.
W. v. s. 317.
Sess. 31. ch. 155
§ 2, 4.
References *supra*.

And for a second offence of a like nature, for life.

VI. And be it further enacted, That every person convicted of either of the offences specified in the seventh, eighth, ninth, tenth, and eleventh sections of the said act, entitled "an act to prevent forgery and counterfeiting," shall be punished with imprisonment in the state-prison for life, or for such term not less than seven years, as the court, having cognizance of the offence, shall in their discretion deem proper.

Certain forgeries punishable with imprisonment for life, or not less than 7 years.
W. v. s. 335.
Sess. 31. ch. 165
§ 10.
3 John. ch. 345

VII. And be it further enacted, That every person who shall hereafter be convicted of the offence of administering, or causing or procuring to be administered, or willingly acting or assisting in administering to any other person, any poison, with intent to murder such person, and where such person shall not thereof die within one year and a day, then every person so convicted, shall and may be adjudged by the court, before whom the conviction in either of the said cases is had to imprisonment in the state-prison for a term not exceeding fourteen years.

Poisoning, where death do not ensue in one year and a day, punishable with imprisonment not exceeding 14 years.
W. v. s. 501.
Sess. 32 ch. 138
§ 1.
References *supra*.

VIII. And be it further enacted, That every person who shall hereafter be duly convicted of any of the offences specified in the sixth section of the said act, entitled "an act to prevent forgery and counterfeiting," shall be punished with imprisonment in the state-prison for a term not exceeding seven years.

Certain forgeries punishable with imprisonment not exceeding 7 years.
W. v. s. 501.
Sess. 32. ch. 138
§ 1.

IX. And be it further enacted, That every person who shall hereafter be convicted of any assault, with intent to rob, murder, or commit a rape, and every person who shall aid, abet, assist, hire, command or procure any other person to commit any of the said offences, and be thereof duly convicted, shall be punished by fine or imprisonment, or both; or if it shall be deemed proper by the court before whom any such person shall be convicted, that instead of, or in addition to a fine, such person ought to be imprisoned in the state-prison, in such case it shall be lawful for such court, in their discretion, to adjudge the person so convicted to imprisonment in the said prison, for any term of time not exceeding seven years: *And further*, That every person who

Assault with intent to rob, murder or rape punishable by fine and imprisonment.
K. & R. v. 1. 264
§ 5.
W. v. s. 501.
§ 3.
7 Geo. 2, c. 21

Imprisonment in state-prison not exceeding 7 years.

And a second offence not exceeding 14 years.

Petit larceny punishable by fine and imprisonment not exceeding 200 dollars or 3 years imprisonment. K & R. v. 1. 254. § 8 W. v. 5, 338 Secs. 31, c 155 § 13 Calq. pol. Lou. 109, 250 6 Joan Rep. 103 2 Ib. 477

Convicts of *petit larceny* may be regulated in their diet while in prison. W. v. 5, 330 Secs. 31, c 155 § 16

Convicts in a county gaol may be confined in solitary cells. W. v. 5, 338, 339 Secs. 31, c 235 § 14 19

Buying or receiving stolen goods or other goods obtained by false pretences and any other offence not herein provided for. K & R. v. 1. 254 § 8 7 Joan Rep. 201 3 & 4 W. 2, c 9 1 Ann c 9. 4 Geo. 1, c 12 20 Geo. 2, c 30 30 Geo. 2, c 24 10 Geo. 3, c 48 21 Geo. 3, c 69 23 Geo. 3, c 58

Punishable by fine and imprisonment

Imprisonment for 3 years.

A second offence for 5 years.

Convicts imprisoned for less than 3 years to be confined in county gaols. K & R. v. 1. 255 § 6 W. v. 5, 338 Secs. 31, c 155 § 11

shall be a second time, or oftener, convicted of any offence specified in this section, shall in like manner be adjudged to imprisonment in the said prison, for any time not exceeding fourteen years.

X. *And be it further enacted*, That every person who shall be guilty of the felonious taking and carrying away of the mere personal goods of another, of the value of twelve dollars and fifty cents or under, if unconnected with any other crime, shall be deemed and adjudged guilty of petit larceny only, and that every person who shall hereafter be duly convicted of petit larceny, shall be punished by fine not exceeding two hundred dollars, or imprisoned in the county gaol or prison for a term not exceeding three years.

XI. *And be it further enacted*, That in all cases where the punishment, or any part thereof, by this act ordained for petit larceny, shall be imprisonment, the court before whom the offender shall be convicted may order and direct that the offender be fed on such diet as the said court may think most likely to conduce to the reformation of such offender.

XII. *And be it further enacted*, That every person who shall hereafter be duly convicted of any offence, for which the offender is liable to imprisonment in the gaol of the county, in every such case the court before whom the conviction is had, may sentence the person convicted to be imprisoned in one of the solitary cells of the county, if any such be erected.

XIII. *And be it further enacted*, That every person who shall hereafter be convicted of any felony, the punishment whereof is not herein before provided for; or where any person shall buy or receive any goods or chattels, of any value whatsoever, that shall have been feloniously taken away, or stolen from any other person, knowing the same to be stolen, whether the principal be convicted or not, or shall knowingly and designedly, by false pretence, obtain from any other person any money, goods or chattels, or other effects whatsoever, with intent to cheat or defraud any person, or body politic or corporate, and every person who shall aid, abet, assist, hire, command or procure any other person to commit any of the said offences, or who shall be accessory to any felony whatsoever after the fact, shall, being convicted of any of the said offences, be punished by fine and imprisonment, or either; or if it shall be deemed proper by the court before whom any such person shall be convicted, that instead of, or in addition to a fine, such person so convicted ought to be imprisoned for three years, in such case it shall be lawful for such court, in their discretion, to adjudge the person so convicted to imprisonment in the said prison for the term of three years: *And further*, That every person who shall be a second time, or oftener, convicted of any offence specified in this section, shall be adjudged by the court who may give judgment thereupon, to imprisonment in the said prison for any time not exceeding five years.

XIV. *And be it further enacted*, That no person sentenced to imprisonment for any term of time less than three years, shall be liable to be imprisoned in the state-prison, but shall be confined in the gaol of the city or county in which such person may be so sentenced.

XV. And be it further enacted, That in case any person hath been or shall be sentenced to imprisonment in the state-prison for any term of years, and shall break the said prison and escape from thence, and be retaken, such person being thereof convicted, shall be deemed guilty of felony, and shall be adjudged to imprisonment in the said prison for double the term of time specified in the original judgment against such person, to commence from the period of the last conviction; notwithstanding the term for which such person was to have been imprisoned may, when such person shall be retaken, have expired.

Breaking and escaping from state-prison punishable by imprisonment for double the original term. K&R. v. 1. 255 § 8
2 Geo. 2, c. 25
25 Geo. 2, c. 10
16 Geo. 2, c. 31

XVI. And be it further enacted, That if any person adjudged to be imprisoned in the said prison, otherwise than for life, shall escape from the same, then, as often as such person shall so escape, and be retaken and again imprisoned in the said prison, the period for which such person was adjudged to be imprisoned in the said prison shall always be deemed to commence anew from the day when such person shall, after having escaped, be retaken and imprisoned again in the said prison, which day shall be ascertained by the inspectors of the said prison; and every such person may be so retaken and imprisoned again, notwithstanding the term for which such person was to have been imprisoned may, when such person shall be retaken, have expired.

And the original period of imprisonment to commence upon the retaking. K&R. v. 1. 255 § 9

XVII. And be it further enacted, That in all cases where any person shall be duly convicted or attainted of any felony, committed after the twenty-ninth day of March, one thousand seven hundred and ninety-nine, or of aiding, abetting, hiring or commanding any person to commit any such felony, and shall be adjudged to imprisonment for life in the state-prison, such person shall be deemed and taken to be civilly dead to all intents and purposes in the law.

Persons sentenced to prison for life adjudged civilly dead. K&R. v. 1. 256 § 10

XVIII. And be it further enacted, That if any person imprisoned in the said prison, otherwise than for life, shall attempt to escape, or shall aid any other person imprisoned in the said prison, in escaping or attempting to escape from the same, such person shall be deemed guilty of a misdemeanor, and shall, on conviction, be adjudged to be imprisoned in the said prison for such further term, not for life, after the determination of the term for which such person had, at the time when the said misdemeanor was committed, been adjudged to be imprisoned, as the court shall, in their discretion, deem proper; and the court before whom a person may be indicted for the misdemeanor aforesaid, may, from time to time, by order of the court to be directed to the inspectors of the said prison, order the defendant in such indictment, and every other person imprisoned in the said prison being a competent witness, to be brought before them; and also to assign counsel to the defendant, which counsel shall, at all convenient times, be admitted to converse in private with such defendant in the said prison.

Attempting to escape from state-prison adjudged a misdemeanor in certain cases. K&R. v. 1. 256 sec. 11
References supra
And how punishable.

XIX. And be it further enacted, That if any person shall, in any manner howsoever, aid or assist any person confined in the said prison, in escaping or attempting to escape from the same, such person shall be deemed guilty of a misdemeanor, and shall, on conviction thereof in due form of law, be adjudged to be imprisoned

Imprisoned witnesses how obtained.
Counsel allowed to visit defendant and converse in private

And persons assisting convicts to escape from st. prison guilty of a misdemeanor. K&R. v. 1. 256 § 12

References
supra
How punished.
ble.

Perjury and
subornation of
perjury and
assisting pri-
soners to es-
cape from any
gaol for felony
§ 13
References
supra
3 John. Rep.
449.

How punished

Convicts in N.
York may be
put to hard
labor at the
fortifications,
etc.
W. v. 5, 330
Sess. 31, c. 155
§ 17
19 Geo. 3, c. 74
24 Geo. 3, st.
2, c. 56
Calif. pol. & an.
288

Convicts dy-
ing in st. pri-
son may be
dissected.
W. v. 5, 340
Sess. 31, c. 155
§ 22

Convicts in st.
prison may be
adjudged to
hard labor,
etc.
W. v. 5, 340
Sess. 31, c. 155
§ 22

soned in the said prison for such term of time as the court in which such conviction may be had, shall, in their discretion, deem proper, not exceeding ten years.

XX. *And be it further enacted*, That any person who shall be duly convicted of the crime of perjury or subornation of perjury, or of aiding or assisting any prisoner lawfully committed to, or detained in, any gaol for any felony whatsoever, in escaping or attempting to escape from any such gaol, though no escape be made, or of conveying any disguise, instrument or arms into any gaol, to and for the use of any such prisoner so committed or detained as aforesaid, with intention to facilitate his or her escape, though no escape be made or attempted to be made, shall be punished with imprisonment in the said prison; and the court before whom such conviction shall be had, shall, upon consideration of all the circumstances of the case, adjudge such person so convicted to imprisonment in the said prison, for any term not exceeding ten years, according to the nature and aggravation of the offence.

XXI. *And be it further enacted*, That whenever any person shall be convicted in the city and county of New-York, either before the general sessions of the peace, or any court of oyer and terminer, of any offence for which such person is liable to imprisonment, other than in the state-prison, in every such case the court before whom such conviction takes place, may, in their discretion, direct the offender to be sent to any place, in the city and county of New-York or its vicinity, where fortifications are erecting or directed to be erected by authority of this state or of the United States, and there to be confined at hard labour for such period of time as the court may direct, not exceeding however the time that such court is authorised to imprison any person convicted as aforesaid.

XXII. *And be it further enacted*, That the inspectors of the state-prison may, at their discretion, deliver the bodies of such convicts as die in the said prison, for the purpose of dissection.

XXIII. *And be it further enacted*, That in all cases where a person is sentenced to imprisonment in the state-prison, it shall be in the discretion of the court to direct that such person shall be kept at hard labour or in solitude, or both, during his or her imprisonment.

CHAP. XX.—(R.L.)

An ACT to prevent Servants embezzling their Masters' Goods.

Passed, February 25, 1813.

[J.&V. v. 2 214.—Gr. v. 2. 43.—K&R. v. 1. 122.]

Be it enacted by the people of the state of New-York, represented in Senate and Assembly, That if any servant, to whom any money, goods, chattels, or bills of exchange, bonds, orders, warrants, bills or promissory notes for payment of money, or any

Servants em-
bezzling their
masters' mo-
ney, goods, or
chattel in ac-
tion, to a cer-

public securities, issued, or to be issued, by authority of the United States or of this state, for payment of money, heretofore have been or hereafter shall be, by his or her master or mistress, delivered to be safely kept, hath withdrawn himself or herself from his or her said master or mistress and gone away, or hereafter shall withdraw himself or herself from his or her said master or mistress, and go away with the said money, goods, chattels or bills of exchange, bonds, orders, warrants, bills or promissory notes for payment of money, or any public securities issued or to be issued by authority of the United States or of this state, for payment of money or any part thereof, to the intent to steal the same and defraud his or her said master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, or being in the service of his or her said master or mistress, without assent or commandment of his or her said master or mistress, hath embezzled or shall embezzle the same money, goods, chattels or bills of exchange, bonds, orders, warrants, bills or promissory notes for payment of money or any public securities issued or to be issued by authority of the United States or of this state, for payment of money or any part thereof, or otherwise hath converted or shall convert the same to his or her own use, with like purpose to steal the same, then, and in every such case, if the said money, goods, chattels, bills, or promissory notes for payment of money or any public securities issued or to be issued by authority of the United States or of this state, for payment of money that any such servant hath gone away with, or shall go away with, or which said servant hath embezzled or shall embezzle, with purpose to steal the same as aforesaid, be of the value of two dollars and fifty cents or above, the same false, fraudulent and untrue act or demeanor shall be adjudged felony. But this act shall not extend to any apprentice, nor to any person within the age of eighteen years, going away with the monies, goods, chattels or bills of exchange, bonds, orders, warrants, bills or promissory notes for payment of money, or any public securities issued or to be issued by authority of the United States or of this state for payment of money, of his or her master or mistress, or otherwise converting the same to his or her own use during the time of his or her apprenticeship, or being within the age of eighteen years; and every apprentice, and every other person under the age of eighteen years, doing or offending, contrary to this act, shall stand and be in like case as if this act had not been made.

train value,
with intent to
steal them, de-
clared guilty
of felony.
21 H. S. c. 7
§ 21. c. 10

Not to extend
to apprentices
or persons
under 18 years
of age.
21 H. S. c. 27
§ 3

CHAP. LXXXIX.—(R.L.)

An ACT relative to District Attornies:

Passed April 9, 1813.

[Gr. v. 3. 265, 498.—K. & R. v. 1. 461.—W. v. 5. 274, 410, 522.—Sess. 36. c. 54.]

I. BE it enacted by the People of the State of New-York, represented in Senate and Assembly, That the person administering the government of this state, shall, as often as may be necessary, by

District attornies
to be ap-
pointed.
K. & R. v. L.
461 § 1

	and with the advice and consent of the council of appointment, appoint and commission a proper person to the office of District Attorney,* in each of the districts herein after mentioned, each of whom shall be of the degree of counsel in the supreme court, and resident in such district; and that the said districts shall be as follows, to wit:—The city and county of New-York, and the counties of Suffolk, Queens, Kings and Richmond, shall be the
First district,	first district; the counties of Westchester, Putnam and Rockland, shall be the second district; the counties of Orange, Ulster,
Second,	Dutchess, Delaware and Sullivan, shall be the third district; the
Third,	counties of Columbia, Rensselaer and Greene, shall be the fourth
Fourth,	district; the counties of Washington, Warren, Essex, Clinton and
Fifth,	Franklin, shall be the fifth district; the counties of Albany, Saratoga, Montgomery, Schoharie and Schenectady, shall be the
Sixth,	sixth district; the counties of Herkimer, Otsego, Madison and
Seventh,	Oneida, shall be the seventh district; the counties of St. Lawrence, Jefferson and Lewis, shall be the eighth district; the counties of Onondaga, Cortlandt, Chenango and Cayuga, shall be the
Eighth,	ninth district; the counties of Broome, Tioga, Steuben, Allegany and Cattaraugus, shall be the tenth district; and the counties of Seneca, Ontario, Genesee, Niagara and Chataque, shall be the
Ninth,	eleventh district; that it shall be the duty of the several district
Tenth,	attornies, to attend the courts of oyer and terminer and gaol delivery and general sessions of the peace, to be from time to time held within the districts for which they are or shall be appointed
Eleventh,	respectively, and to conduct all prosecutions for crimes and offences cognizable in the said courts; and the commission hereafter to be issued to each district attorney, shall designate the number of the district for which he shall be so appointed.
Duty of district attorneys.	II. And be it further enacted, That the attorney-general shall, with respect to attainders, outlawries, and convictions in the supreme court, and the respective district attorneys shall, with respect to attainders, outlawries, and convictions in the courts of oyer and terminer and gaol delivery, and in the courts of general sessions of the peace in the several counties within their respective districts, of any person for any manner of treason or felony, certify into the court of exchequer, at the next term, there to remain of record, a transcript containing the tenor and effect of every such attainer, outlawry or conviction, and of the indictment upon which the same shall be so had; that is to say, the name, surname and addition of every such person so convicted, outlawed or attainted, and the felony or other offence whereof he shall be so convicted, outlawed or attainted, and the day and place of the conviction, outlawry or attainer, and before whom the same was had, and the day and place when and where the said felony or other offence was done, and the judgment thereupon given, upon pain to forfeit, for every omission or neglect, the sum of twenty-five dollars to the people of this state; and the clerk of the court of exchequer, shall receive all such certificates
Commission to designate the number of the district.	
Att. gen. and dist. attorneys to certify certain transcripts, etc. Kitch. v. L. 462 § 2	
9 Ed. 3 c. 1 c. 5	
20 Ed. 3 c. 2	
Description and substance of the transcripts.	
Penalty for neglect.	
Clerk of the exchequer to	

* The present system of conducting public prosecutions by means of "assistant attorneys general," as they were then called, was adopted February 12, 1796—*vide* Gr. v. 3. 265—*vide* also, 10 & 11 W. 3. c. 23. § 7, 8.—3 Bl. com. 27, 28.—Colq. police of London, 175.—[Philadel. Ed. 1798.]

and transcripts, when the same shall be presented and offered to him by any of the officers aforesaid, without taking any thing for the same, and shall at all times, without fee or reward, when requested by the attorney-general of this state, or by any prosecutor against any person named in any such certificate or transcript, for any second offence, make and deliver to the attorney-general or prosecutor, a true copy of such certificate or transcript, certified under his hand and the exchequer seal; and every such copy so certified, shall be good evidence of such former conviction, outlawry or attainder.

to receive and file such certificates and transcript, and shall give copies when required.

Such copies evidence.

III. *And be it further enacted*, That the accounts of the several district attorneys for their services, shall be examined and audited in the court of exchequer, and the amount of their compensation thereupon to be allowed, shall be paid by the treasurer of the state, on the warrant of the comptroller, to be issued on a certificate of such compensation, under the hand of the judge and seal of the said court.

Accounts of district attorneys audited in the exchequer and paid out of the treasury. K&R. v. 1. 463 § 3

IV. *And be it further enacted*, That when any district attorney shall fail to attend any court of oyer and terminer and gaol delivery, or general sessions of the peace within his district, it shall be lawful for such court to appoint some person to transact the business of the said attorney during the then sitting of the court; and the person so appointed, shall be entitled to the same compensation for the services he shall perform, as the district attorney would have been entitled to for the same services, and his account shall be audited and paid in like manner as the accounts of district attorneys are audited and paid.

If district attorney fail to attend oyer and terminer, etc. W. v. S. 374 Sess. 31. c. 47 § 2

V. *And be it further enacted*, That it shall be the duty of the district attorney, residing in the fifth district, to advise and direct the St. Regis Indians residing at St. Regis, in the controversies among themselves and with any other person, and defend all actions brought against any of them by any white person, and commence and prosecute all such actions for them or any of them, as he may find proper and necessary.*

District att. of the fifth district to advise and direct the St. Regis Indians in their controversies, etc. W. v. S. 410 Sess. 31, c. 336 § 2

VI. *And be it further enacted*, That it shall and may be lawful for the said district attorney, in all suits which he may find proper and necessary to commence and prosecute on behalf of the said Indians, to bring the same in the name of the St. Regis Indians, without naming any of the individuals of the said tribe, any law, custom or usage to the contrary notwithstanding.†

Suits how to be commenced for the St. Regis Indians. Sess. 34, c. 243

* This section included also in the act, "relative to the different tribes and nations of Indians within this state, passed April 10, 1813, *vide* section 16.

† This section also included in the act "relative to the different tribes, etc. *vide* section 16.

An ACT concerning Counsellors, Attornies and Solicitors.

Passed April 2, 1813.

[S.&L. v. 1. 117, 357, 372.—V. 8. v. 1. 102, 271.—Ibid. v. 2. 767.—J.&V. v. 2. 64, 278.—Constitution of the state, art. XXVII.—Gr. v. 1. 356.—Ibid. v. 2. 112.—K.&R. v. 1. 219.—Sess. 30. ch. 107.—Sess. 33. ch. 196.—Sess. 26. ch. 103.]

Persons of full
age etc may
appear by at-
torney in civil
cases or in
person
K.&R. v 1

319

29 H. 3. c 10

15 H. 6. c 7

13 Ed. 1. st. 1

c 10

7 R. 2 c 14.—13 Ed. 3. st. 2. c 1.—15 Ed. 2. st. 1.—3 Bl. Com. 25.—3 Jac. 1. c. 7.—12 Geo. 1. c 29.

—4 Geo. 2 c 23—23 Geo. 2. c 46—23 Geo. 2. c 26.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That every person of full age and sound memory, other than defendants in cases where corporal punishment may be inflicted, may appear by attorney in every action or plea by or against him in any court in this state, or may at his election prosecute or defend the same action or plea in proper person.

Warrants of
attorney how
taken
K. & R. v 1

320, sec 2

33 H 3 c 30

18 Kl. c 4

II. *And be it further enacted,* That all warrants of attorney of the parties in all actions and pleas in any court of record shall be taken before a judge of the court in which such action or plea shall be depending, and if such action or plea be depending in the supreme court, then the same may also be taken before a judge of any court of common pleas, who shall certify and deliver the same to the party acknowledging it; and all such warrants may be acknowledged by the party or his agents duly authorised for that purpose, in writing; and where any infant shall sue, some next friend of such infant shall be admitted in manner aforesaid to sue for such infant, and where such infant shall be impleaded, a guardian shall in like manner be appointed to defend for him.

How infants
may sue and
be sued

Warrants,
when filed

K.&R. v 1

320, sec 3

2 Geo. 2. c 23

III. *And be it further enacted,* That the attorney for the person bringing the action shall file his warrant of attorney with the clerk of the court where the action is depending the same term he declares, and the attorney for the opposite party shall file his warrant of attorney as aforesaid, the same term he appears, and in default thereof, shall make satisfaction to the party grieved according to the discretion of the court where such default shall be made; and every attorney who shall confess any judgment in any case shall, at the time of making such confession, produce his warrant for making the same to the court or judge before whom he makes the confession, and the warrant shall then be filed with the clerk of the court in which the judgment shall be entered.

Qualifications
of attorneys

K.&R. v 1 320

§ 4

4 H. 4. c 18

2 Geo. 3. c 23

3 J. 1. c 7

22 Geo. 2. c 40

etc.

Oath

3 Caines's Rep

386

IV. *And be it further enacted,* That no person shall be admitted a counsellor, attorney or solicitor in any court, unless he be approved of by such court for his good character and learning; and the name of every person admitted shall be put in a roll or book to be kept in each court for that purpose, and every person so admitted, shall upon such admission, in open court, take and subscribe an oath of office, in the words following: I do swear that I will truly and honestly demean myself in the practice of an attorney (or counsellor, or solicitor as the case may be) according to the best of my knowledge and ability.

V. *And be it further enacted*, That if any counsellor, attorney or solicitor shall be found notoriously in default of record, or otherwise guilty of any deceit, mal-practice or misdemeanor, he may be suspended or put out of the roll at the discretion of the court; and if put out of the roll, shall never afterwards be received to act as a counsellor, attorney or solicitor in any court: *And further*, That when any attorney shall die or cease to act or be put out of the roll of attorneys, the person for whom he was attorney shall be warned to appoint another attorney in his place.

When to be put out of the rolls
K & R. v 1
230 § 5
References
supra
In case of death, etc.
another to be appointed by the party
3 Calmes's Rep
150

VI. *And be it further enacted*, That if any counsellor, attorney or solicitor be guilty of any manner of deceit or collusion, or consenting thereto whereby to deceive the court or the party, he shall be punished by fine and imprisonment, and the party grieved shall have his action against him and recover therein treble damages and costs of suit; and if any attorney or solicitor shall wilfully delay his client's suit to work his own gain, or wilfully demand by his bill any money or allowance for or upon account of any money which he hath not laid out or become answerable for, the party grieved shall have the like action and recovery as aforesaid; and if any attorney shall knowingly and wilfully permit or suffer any other person to sue out any writ or prosecute or defend any action in his name, such attorney as well as such person shall each of them forfeit for every such offence the sum of fifty dollars, the one moiety thereof to the people of this state, and the other moiety to the party grieved, to be recovered by action of debt or by information in any court of record.

Mal practice, how punished
K and R v 1
230 § 6
References
supra

3 Calmes's Rep. 221
1 John. ca 181, 390
5 John. Rep 368
3 Jac. 1 c 1 § 7
23 Geo. 2 c 23

VII. *And be it further enacted*, That if any attorney of the supreme court or of any court of common pleas, shall purchase or receive by way of pledge or security for money lent any bond, note or other writing, with intent to commence a suit thereon, and shall commence such suit accordingly, every such attorney shall be deemed guilty of a misdemeanor.

Attorneys purchasing notes, etc. to put in suit, guilty of a misdemeanor
W. v 5 117
Sess. 30 c 107
§ 4

VIII. *And be it further enacted*, That every process by which any party is to be arrested, and every writ of execution, or some label annexed shall, before service or execution thereof be subscribed or endorsed, with the name of the attorney or person by whom the same process or writ of execution shall be sued forth.

Atty's name required to process
K & R. v 1. 221
§ 7
2 Geo. 2. c 23
12 Geo. 2. c 13

IX. *And be it further enacted*, That no attorney, solicitor, sheriff or coroner shall commence any action for recovery of any fees or charges until eight days after he shall have delivered to the party to be charged therewith, or left for him at his dwelling-house or last place of abode, a bill of such fees and charges written in a common legible hand in the English tongue, except law terms and the names of writs, and in words at length, except times and sums and such abbreviations as are commonly used in the English language, subscribed with the proper hand writing of such attorney, solicitor, sheriff or coroner.

Attorneys, sheriffs, etc. to serve bills of costs eight days before suit
K & R. v 1. 221
§ 8
3 Jac. 1. c 7
2 Geo. 2. c 23
§ 23

X. *And be it further enacted*, That no clerk, deputy clerk, register, assistant register, or deputy register of any court, nor any examiner or master of the court of chancery shall act as counsellor, attorney or solicitor in any action or matter in the same court, and that no under sheriff, sheriff's clerk or coroner, shall, during his continuance in office, act as a counsellor, attor-

Persons prohibited from practising
K & R. v 1. 221
§ 9
Sess. 33. c 106
sec 6
22 Geo. 2 c 40
And references
supra

Proviso

ney or solicitor in any court, and that the attorney-general shall not act as attorney in any private suit unless the people of this state shall be interested in the event of such suit: *Provided nevertheless*, That the clerk of the circuit court and sittings in the city of New-York, and the clerks of the circuit courts in this state may practice as attorneys and counsellors in the supreme court.

Attornies, etc.
not entitled
as witnesses to
sue in their
own causes
Secs. 26. c 103
§ 19
W v 3, 351
Attornies, etc.
liable to ar-
rest on *mesne*
process
1 John.ca.338

XI. *And be it further enacted*, That no attorney or counsel in any cause shall be allowed any compensation as witness in any cause in which he shall be either attorney or counsel.

XII. *And be it further enacted*, That all officers of the said courts shall be liable (except during the actual sitting of such court) to arrest on *mesne* process, or by virtue of a writ of *capias ad respondendum*, and may be held to common and special bail in like manner as other persons may be arrested and held to bail, any law, usage, custom or privilege to the contrary in any wise notwithstanding.

[Cases as to *Attornies*, &c.—1. Caines's Rep. 68, 258.—3. Ibid. 221.—1. John. ca. 33, 134, 181, 244, 328, 390.—2. Ibid. 67, 102, 109.—2. John. Rep. 296.—3. Ibid. 185, 261. 4. Ibid. 188, 191, 289, 430.—5. Ibid. 252.—6. Ibid. 106, 296, 318, 332.—7. Ibid. 537, 539.—8. Ibid. 64, 298, 346, 353, 361.—9. Ibid. 114, 142, 171, 216, 253, 266, 347.]

CHAP. LXVII.—(R.L.)

An ACT concerning Sheriffs and their Duty, in respect to Process, Arrests and the Keeping of Prisoners.

Passed April 6th, 1813.

[V. S. 1. 375.—Ibid. v. 2. 760, 761.—Constitution, Art. XXVI.—J.&V. v. 1. 242, 249.—Ibid. v. 2. 59, 114, 116, 177, 279, &c.—Gr. v. 1. 11, 203, 351, 339, 340, 352, 408, 410.—Ibid. v. 2. 46, 292.—Ibid. v. 3. 191.]

Sheriffs to be
substantial
freeholders.
K & L. v 1.
204
Art. sup. cart.
28 Ed. 1. st. 8
c. 8
St. Line. 9.
Ed. 3. st. 2
3 Ed. 3. c 4
4 Ed. 3. c 9
5 Ed. 3. c 4
14 Ed. 3. st. 1
c 7
13 & 14 Car. 2
c 31

Form of com-
mission

Writ of dis-
charge when
and how to be
issued
Form thereof

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That no person shall hereafter be appointed sheriff of any city or county of this state, unless he be a substantial freeholder within such city or county, and that all commissions to sheriffs shall be in this form, to wit:—"The people of the state of New-York to all to whom these presents shall come greeting. Know ye that we have committed to our well beloved A.B. our county of W. (or our city and county of N. as the case may be) with the appurtenances, to keep, during the pleasure of our Council of Appointment. In testimony whereof, we have caused these our letters to be made patent, and the great seal of our state to be hereunto affixed;" and shall be tested or witnessed in the usual form; and that a writ of discharge shall be issued at the same time, and be delivered to the new sheriff, with his commission, and shall be in the form following, to wit:—"The people of the state of New-York to all to whom these presents shall come, greeting—Whereas we have committed to our well beloved A.B. our county of W. (or our city and county of N. as the case may be) with the appurtenances, to keep during

the pleasure of our Council of Appointment: Therefore we command C.D. late sheriff of the county aforesaid, (or of the city and county aforesaid, as the case may be) that by indenture thereof, in due manner to be made, he deliver to the same A.B. the county aforesaid, (or the city and county aforesaid as the case may be) with the appurtenances, together with the rolls, writs, memorandums, and all other things touching that office which are in his custody, to keep in form aforesaid." And such writs of discharge shall be tested in the same manner as the said commission is tested, and be sealed with the great seal of this state; and the said commission and discharge shall be transmitted by the secretary of this state to the clerk's office of the city or county for which every such person shall be appointed sheriff; and it is hereby declared to be the duty of the said clerk to give notice of such commission, without delay, to the person appointed.

How tested,
sealed and
transmitted.

Clerk's duty

II. *And be it further enacted*, That every person hereafter to be appointed to the office of sheriff of the city and county of New-York, before he be permitted to execute the said office, shall enter into bond to the people of this state in the penal sum of twenty thousand dollars, with two sureties, being freeholders, jointly and severally in the said sum to answer to the people of this state, and the parties, if any, will complain, which bond shall be in the form and to the effect following, to wit:—"Know all men by these presents, That we of are held and firmly bound to the people of the state of New-York in the penal sum of twenty thousand dollars, to be paid to the said people, for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this day of in the year one thousand

Security to be
given by sher-
iff of N.York
K & R. v. 1.
205. § 2
6 Com. dig. 402
(A. 2)
Mod. 642
Crompt. Off.
Sher. 202, 203

Form of bond

"Whereas the above bounden hath been appointed to the office of sheriff of on the day of last past. Now, therefore, the condition of the above obligation is such, that if the said shall well and faithfully, in all things, perform and execute the office of sheriff of the said county of during his continuance in the said office, by virtue of the said appointment, without fraud, deceit or oppression, then the above obligation to be void, or else remain in full force." And that every person hereafter to be appointed to the office of sheriff of any other city or county within this state, except the counties of Delaware, Tioga, Steuben, Essex, Clinton, Franklin, Sullivan, Allegany, Cattaraugus, Chatauque, Cortlandt and Broome, before he be permitted to execute the said office, shall enter into bond, in the like form and effect, to the people of this state, in the penal sum of five thousand dollars, with two sureties, being freeholders, jointly and severally in the said sum of five thousand dollars, to answer to the people of this state, and the parties, if any will complain; and that every person, hereafter to be appointed to the office of sheriff of any of the said counties of Delaware, Tioga, Steuben, Essex, Clinton, Franklin, Sullivan, Allegany, Cattaraugus, Chatauque, Cortlandt and Broome, before he be permitted to execute the said office, shall enter

Amount and
nature of se-
curity to be
given by the
other sheriff,
but certain
counties ex-
cepted
Sess 30. c 69
§ 6
Sess 34. c 134
§ 1

Sheriffs of
those counties
to give secu-
rity

Amount and nature thereof

Bonds to be filed

and sureties to be sworn

and clerk to determine their competency

Neglect of giving security in 20 days after notice deemed a refusal to accept the office
K. & R. v. 1 § 3

And such refusal to be notified to the governor.

Sheriffs how long to continue in office
K. & R. v. 1. 206. § 4
Constitution of the state, Art. XXVI
14 Ed. 3. st. 1. c. 7
22 Ed. 3. c. 7
42 Ed. 3. c. 9
46 Ed. 3
23 H. 6. c. 7
1 R. 2. c. 11
9 H. 5. c. 5

Every sheriff to appoint an under-sheriff
K. & R. v. 1. 206 § 5
3 Geo. 1. c. 15 § 5
23 H. 6. c. 9
2 Inst. 191
Hob. 13
6 Com. dig. 412 (A. 9)
2 John. Rep. 65—3 ib. 431
5 ib. 137
If sheriff die, the under-sheriff to act as such

into bond, in the like form and effect, to the people of this state, in the penal sum of ten thousand dollars, with any number of sureties, being freeholders, not exceeding six, jointly and severally, in the said sum of ten thousand dollars, to answer to the people of this state, and the parties, if any, will complain, and the said bonds shall be filed in the clerk's office of the counties respectively for which such sheriffs shall be appointed; and the said clerks respectively shall, at the time of filing the said bonds, administer an oath to each of the sureties named therein, that he is a freeholder within this state, and worth the sum of five thousand dollars, or twenty thousand dollars, or such part of ten thousand dollars as shall be proportionate to the number of sureties bound in such bond as the case may require, in the said city or in the said counties respectively, over and above all debts whatsoever owing by him, which oath shall be endorsed on the said bonds, and subscribed by the said sureties respectively in the presence of the said respective clerks, but that the said clerks shall notwithstanding, respectively judge of, and determine, the competency of such sureties.

III. *And be it further enacted*, That upon every appointment to the office of sheriff as aforesaid, in case the person appointed shall neglect to enter into bond as aforesaid, for the space of twenty days after notice shall be given to him as aforesaid of his appointment, every such person shall be deemed to have refused to accept the said office; and it shall be the duty of the clerk of the city or county in which such neglect shall happen forthwith, after the expiration of the said twenty days, to give notice thereof to the person administering the government of this state, by letter to be put into the nearest post-office.

IV. *And be it further enacted*, That it shall be lawful for every sheriff, who shall be appointed and commissioned, and take upon himself the office, to continue in and execute all the duties of such office, until a new sheriff shall be appointed and commissioned in his place, and shall have delivered to him a writ of discharge, if he shall be found in the county, and if not, shall have filed the same in the office of the clerk of the county, but it shall nevertheless be the duty of the person administering the government of this state, by and with the advice and consent of the council of appointment, annually to appoint sheriffs and coroners, according to the constitution of this state.

V. *And be it further enacted*, That the sheriff of each county in this state shall, as soon as may be, after he takes upon himself the office, by writing under his hand and seal, make some proper person under-sheriff of the same county during the pleasure of such sheriff; and as often as any such under-sheriff shall die or be removed from his office, or move out of the county, or become incapable of executing the office, another shall be appointed in his place, in the manner aforesaid; and every such deputation or appointment shall be recorded in the office of the clerk of the county; and in case of the death of the sheriff of any county, the under-sheriff of the same county shall in all things execute the office of sheriff of the same county, in the name of

the deceased sheriff, until another sheriff shall be appointed and commissioned, and shall take upon himself the said office ; and the defaults and misfeasances in office of such under-sheriff in the mean time, as well as before, shall be adjudged a breach of the condition of the bond or security given by the sheriff who appointed him ; and the executors or administrators of the deceased sheriff shall have the like remedy for the defaults and misfeasances in office of such under-sheriff, happening during such interval, as such sheriff would have been entitled to, if he had lived and continued in the exercise of the office until his successor was appointed and commissioned, and had taken upon himself the said office ; and in case there shall be no such under-sheriff of any county at the time of the death of the sheriff of such county, or if such under-sheriff shall die or remove out of the county, or become incapable of executing the office before another sheriff of the same county shall be appointed and commissioned, and have taken upon himself the said office, then, and in every such case, the coroner or coroners, if there shall be more than one in such county, shall in all things execute the office of sheriff of the same county, until a sheriff thereof shall be appointed and commissioned, and shall take upon himself the said office ; and in every case of the death of a sheriff, the writ of discharge shall be delivered by the new sheriff to the under-sheriff of the same county, if there be any, and if not, then to one of the coroners of the same county, or filed in the office of the clerk of the same county ; and the new sheriff shall in all cases, be considered as sheriff of the same county, from the time of such delivery or filing the writ of discharge, as aforesaid, and not before : *Provided always*, That nothing herein contained shall be construed to prevent any sheriff from appointing such and so many deputies, besides the said under-sheriff, as he may think proper : *And further*, That no person who may be deputed by any sheriff to do a particular act only, shall be required to take the oath to be taken by the deputies of sheriffs.

VI. *And be it further enacted*, That in case of any recovery by any party aggrieved against any sheriff for any default or misconduct in his office, it shall be lawful for the justices of the supreme court, upon motion in open court, to order the bond so given by such sheriff, to be put in suit against such sheriff, or his sureties, or all or any of them ; and when judgment shall be obtained on such bond, the said supreme court shall, upon motion in open court, direct so much money to be levied thereon as shall be sufficient to pay the party the debt or damages so recovered with costs, and to be paid to such party grieved ; but if such sheriff, or his sureties, or either of them, shall pay the debt or damages so recovered against such sheriff with costs, then such suit on such bond shall thereupon be stayed, and be no further prosecuted : *And further*, That if after judgment obtained upon such bond, any other party aggrieved, and who shall have recovered any debt or damages against such sheriff for any default or misconduct in his office, shall apply to the said supreme court for relief, the said supreme court shall, upon motion in open court, direct such further sum to be levied on such judgment on such

And his defaults, etc. deemed the sheriff, etc. 2 Causes' Rep. 137—7 John. Rep. 35 But the executors of deceased sheriff to have their remedy

But if there be no under-sheriff then coroners to act. Office. Coron. 4 Ed. 1 at 2 St. Wall. 13 Ed. 1

On sheriff's death, to whom writ of discharge to be delivered

Sheriff deemed in office after writ of discharge delivered. Sheriff may have more deputies

A special deputy need not be sworn

When sheriff's bond to be put in suit K&R v 1 207 § 6

No more to be levied than sufficient to satisfy party aggrieved with costs

On payment before judgment, suit to be stayed

After judgment if any other party be aggrieved he may also have execution, etc.

And so toties
quatenus

Sheriffs sure-
ties not an-
swerable be-
yond penalty
of their bond

Except in
certain coun-
ties, etc.

In case two or
more recover-
ies had
against sheriff
in same term,
how sum con-
tained in
bond to be
distributed
Sheriff of N.
York, etc.
to have the
custody of
prisoners, etc.
K&R v 1 208
§ 7
14 Ed. 3, st 1,
c 10
20 H 7, c 10
11 & 12 W 3,
c 19

Prisoners un-
der the autho-
rity of the U.
States to be
received by
sheriffs, etc.
K&R v 1 208
§ 8—2 Caimes'
Rep. 213
until duly dis-
charged, the
United States
supporting
such prisoners
Sheriff of N.Y.
to receive on-
ly prisoners
on civil pro-
cess, and the
keeper of city
prison on
criminal pro-
cess
And sheriffs
and gaolers
liable for es-
cape of pri-
soners com-
mitted by the
U.S. authority.
And authoris-
ed to receive
their compen-
sation for the
use of the
gaol from the
United States.
Sheriffs, etc.
liable for ex-
ortion.
K&R v 1 209
§ 9
11. 4. c. 11.

bond as shall be sufficient to pay the debt or damages so recover-
ed with costs, and to be paid to such party agrieved, and shall so
direct as often as any recovery shall be had against such sheriff
for any misconduct or default in his office: *Provided*, That the
sureties in any bond shall not be charged by virtue of this act
beyond the amount of the sums in which they shall be bound in
any such bond, nor in the said counties of Delaware, Tioga,
Steuben, Essex, Clinton, Franklin, Sullivan, Allegany, Cataraugus,
Chataque, Cortland and Broome, beyond the amount of the
one sixth part of the sum in which they shall be bound as afore-
said: *And provided*, If two or more such recoveries shall be had
against such sheriff in the same term, or at the same time, amount-
ing together to more than the whole amount of the sums contain-
ed in such bond, the said supreme court shall order the monies to
be levied thereupon, to be distributed to the parties respectively
in proportion to the amount of their respective recoveries.

VII. *And be it further enacted*, That in the city and county
of New-York the sheriff thereof shall have the custody of the
gaol for the confinement of persons on civil process only, and the
prisoners in the same; and the sheriff of each of the other cities
and counties of this state shall have the custody of the gaols and
prisons thereof, and the prisoners in the same; and the same
sheriffs respectively shall put in such keepers for whom they will
answer.

VIII. *And be it further enacted*, That it shall be the duty of
the sheriffs of the several cities and counties of this state, and
the duty of the keeper of the city-prison of the city of New-
York to receive into their respective gaols, and safely keep all
prisoners who shall be committed to the same by virtue of any
process to be issued under the authority of the United States,
until they shall be discharged by the due course of the laws
thereof, the United States supporting such of the said prisoners
as shall be committed for offences against the said United States:
Provided always, That persons committed in the city of New-
York on civil process only, be committed to the gaol in the cus-
tody of the sheriff of the said city, and persons committed in the
said city charged with any offence whatsoever be committed to
the gaol in the custody of the keeper of the city-prison of the
said city; and in case any prisoner shall escape out of the cus-
tody of any sheriff or keeper to whom such prisoner may be
committed as aforesaid, such sheriff or keeper shall be liable to
the like actions and penalties as he would have been had such
prisoner been committed by virtue of any process issuing under
the authority of this state; and such sheriff or keeper into
whose custody any such prisoner shall be so committed, is hereby
authorised to take to his own use, such sums of money as shall be
payable by the United States for the use of the said gaols.

IX. *And be it further enacted*, That no sheriffs or other officers
by colour of their office, shall, directly or indirectly ask, demand,
or receive, for any service or act, to be by them performed in
pursuance of any duty of their office, any greater or more fees
than are allowed by law, on pain of forfeiting for every such

offence to the party grieved his treble damages, to be recovered with costs of suit, and also the sum of two hundred and fifty dollars, the one moiety thereof to the people of this state, and the other moiety to the party who shall sue for the same, to be recovered with costs of suit in any court of record having cognizance thereof, by action of debt or by information.

X. *And be it further enacted*, That every sheriff or other officer to whom any writ shall be delivered, in the county where it is to be executed, shall, if required by the person delivering the same, give to such person a certificate under his hand, without taking any thing therefor, wherein the names of the parties, and the day of delivering the writ, shall be mentioned; and when any writ shall be returned, the sheriff or other officer to whom the return thereof doth appertain, shall put his own name to the return of the same; and if any sheriff or other officer shall not make due return to any writ delivered to him to be executed, he shall not only be liable to attachment or amercement, at the discretion of the court where such writ shall be returnable, but also to an action on the case for damages, at the suit of the party grieved: and such sheriff or other officer shall be in like manner responsible if, when commanded to answer of the issues of any lands or chattels, he return less than he might or ought to have returned: And it is hereby declared that rents, corn gathered, and all moveables, except arms, implements of trade and household goods, be comprehended within the name of issues.

XI. *And be it further enacted*, That when the sheriff, or any of his deputies, shall find that resistance will be made against any process of execution, the sheriff, laying aside all other things, and taking with him the power of the county, shall forthwith go in his proper person and do execution; and if he find resistance, he shall certify to the court the names of the resisters, aiders and favorers, and they shall be attached to appear in the same court, and if they be convicted of such resistance, they shall be punished by fine and imprisonment.

XII. *And be it further enacted*, That sheriffs and gaolers shall receive from any constable or other officer, without taking any thing therefor, and safely keep in prison, all felons indicted or taken in the fact, who shall be taken by any constable or other officer, and shall not, of their own authority, let out of prison, on bail or otherwise, any person in their custody by virtue of any process for any treason or felony, or upon any condemnation, execution or *capias utlagatum*, or committed by special order of any court or justices, upon pain of being punished by fine and imprisonment, and to answer the damages of the party grieved, if any be thereby agrieved.

XIII. *And be it further enacted*, That every sheriff and other officer shall let out of prison all persons by them arrested or in their custody, by virtue of process in any personal action, upon reasonable sureties of persons having sufficient within the county where the persons be so let to bail, to answer according to the exigency of such process, except persons so in prison by condemnation, execution, *capias utlagatum*, or by special order of any court or justices; and no sheriff or other officer shall take

St. West. 2
13 Ed. 1, c 44
3 Geo. 1, c 15
25 Geo. 2, c 29
To pay treble
damages to
party grieved:
Further pen-
nalty.

Sheriff, etc. to
certify deliv-
ery of writs if
required with-
out fee.

K&R. v. 1. 200

§ 10

All returns of

writs to be

signed by re-
turning officer

St. Ebor. 13

Ed. 2, st. 1, c 5

If not duly re-
turned liable

to attachment

or amercia-
ment, etc.

4 H. 6, c 1

St. Westm. 2,

13 Ed. 1, c 39

Art. sup. cart.

25 Ed. 1, c 16

1 John Rep.

214, 2, 5

§ 1b. 356

The like reme-
dies for not

returning is-
sues etc.

Issues, what

Process comen-
tus may be re-
quired, etc.

K&R. v. 1. 200

§ 11

St. Westm. 2,

13 Ed. 1, c 39

And the

names of those

resisting, etc.

to be certified,

and they to be

attached, etc.

1 Caines' Rep.

57.

Sheriffs, etc. to

receive all fel-
ons indicted

or taken in

the fact.

K&R. v. 1. 210

§ 12

4 Ed. 3, c 10

And not dis-
charge any

prisoners, etc.

27 Ed. 1, st. 1,

c 3.

On pain of fine

and imprison-
ment, etc.

Sheriffs when

and how to

take bail

bonds in civil

suits.

K&R. v. 1. 210

§ 13

23 H. 6, c 9

1 Caines' Rep.

450, 252

Exception as

to persons in

execution, etc.

Obligations taken by sheriffs, etc.

Void if taken by colour of their office other than be fore set forth.

1 John. ca. 190
2 Ib. 239

7 Ib. 159. 319
Sheriffs answerable for returns and upon surrenders.

Sheriffs not to take bail on writs which do not express the cause of action.

K&R. v 1, 210
§ 14

12 Geo. 1, c 50
8 Geo. 2, c 27

13 Car. 2, st. 2, c 3

Exceptions as to writs of *capias* *utlagatum*, attachment, etc.

Appearance to be endorsed on meane process not expressing cause of action.

Sheriff not to be attached or amerced by reason thereof

Clerk to enter the appearance of defendants endorsed on writs out of mayor's courts and common pleas
K&R v 1, 211
§ 15

Prisoners not to be taken to taverns, etc. unless by their consent.

K&R. v 1, 211
§ 16

22 & 23 Car. 2, c 30

32 Geo. 2, c 38

Nor illegal fees demanded

Nor rewards for keeping a prisoner out of gaol.

any obligation for any cause aforesaid, or by colour of their office, but only to themselves and by the name of their office, and upon conditions written, that the prisoner named therein shall appear at the day and place required in the said process; and if any sheriff or other officer take any obligation in other form, by colour of their offices, it shall be void; and if any sheriff or other officer return upon any process, that he hath taken the body, or that such person hath surrendered himself, such sheriff or other officer shall be chargeable to have the body according to the command of the said process, in the usual form.

XIV. *And be it further enacted*, That no person arrested by any sheriff, officer or other person, by force or colour of any process issued out of the supreme court, except writs of *capias utlagatum*, attachments upon rescues, and attachments upon contempt, in which process the certainty and true cause of action is not expressed particularly, and for which every defendant in such process named shall be bailable by such sheriff or other officer as aforesaid, shall be compelled to give security, or to enter into bond, with sureties, for the appearance of such person so arrested, at the day and place in such process specified; but all sheriffs and other officers shall let from their custody every person by them arrested upon any process wherein the certainty and true cause of action is not particularly expressed, except as before excepted, upon the person so arrested indorsing his appearance upon such process, and where such appearance shall be so indorsed, the clerk of the supreme court shall, at the return of the said process, enter the appearance of the person so indorsed; and after such appearance, no amercement or attachment shall be let or had against any sheriff or other officer for the want of such appearance.

XV. *And be it further enacted*, That where, on any process that shall be issued out of any mayor's court or court of common pleas, special bail is not required, and the appearance of the defendant shall be indorsed on such process, the clerk of the same court shall, at the return of the same process, enter the appearance of every such defendant so indorsed, which shall be a sufficient appearance for every such defendant to enable the plaintiff to proceed to judgment and execution in the suit.

XVI. *And be it further enacted*, That if any sheriff or other officer shall have in his custody any person, by virtue of any process or warrant whatsoever, it shall not be lawful for such officer to carry the said person to any tavern, ale-house, or other public victualling or drinking-house, without the voluntary consent of the said person, so as to charge such prisoner with any sum of money for any drink, victuals or other thing whatsoever, but what the said person shall call for, of his own accord: and such officer shall not directly or indirectly demand, take or receive, any other or greater sum than what by law ought to be taken or demanded for such arrest, taking, or waiting until such person shall have procured an appearance, found bail, agreed with his adversary, or be sent to gaol, nor take or exact any other reward or gratuity for so keeping the said person out of gaol, than what such person shall of his own accord voluntarily give,

nor take or receive any other or greater sum for each night's lodging or other expenses, than what is reasonable and fitting in such cases, or shall be so adjudged by the next justice of the peace, or at the general sessions; and shall not cause the said person to pay for any drink, victuals or other things, than what such person shall voluntarily and particularly call for; and every sheriff or other officer, or person having the custody of any such prisoner, shall permit him, at his own will and pleasure, to send for and have any beer, ale, victuals, and other necessary food, where and from whom any such prisoner pleases; and to have and use such bedding, linen and other things, as such prisoner shall think fit, without any detaining or paying for the same, or any part thereof; and shall not demand, take or receive of such prisoner, any other or greater fees for his commitment, release or discharge, than shall be allowable by law, nor any thing whatsoever for the chamber rent of such prison: *And further*, It shall not be lawful for any sheriff, or keeper of any gaol, to put or keep prisoners for debt, and felons, together in one room, but they shall be kept separately in distinct rooms.

Prisoners how to be kept in gaol.
22 & 23 Car. 2. c. 30
2 Geo. 2. c. 25, 23

Legal fees only to be demanded for commitments and discharge of prisoners. Debtors and felons not to be kept in the same rooms.

XVII. *And be it further enacted*, That every sheriff and other officer who shall offend against any thing in either of the four last preceding sections of this act, shall forfeit his office or place, and also treble damages to the party grieved, to be recovered, by action of debt, or information in any court having cognizance thereof, with costs of suit.

Penalties on sheriffs, etc. for certain offences.
K & R. v. 1. 211
sec. 17

XVIII. *And be it further enacted*, That it shall not be lawful for any sheriff, gaoler or marshal, to confine male and female prisoners, who are or shall be imprisoned, either civilly or criminaly, except husband and wife, in any gaol or prison in this state, in the same prison-room; and in case any sheriff, gaoler or marshal, shall offend in the premises, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined at the discretion of the court before whom such conviction shall be had.

Male and female prisoners to be kept apart, except husband and wife.
Sec. 38. c. 239
§ 44

Penalty.

XIX. *And be it further enacted*, That every person who shall be arrested by virtue of any writ of execution to be issued from any court of record against his or her body, for any debt or damages, by any sheriff or other officer to whom any such writ shall be directed; and every person who shall be committed to the custody of any sheriff or other officer, in execution of any such debt or damages, shall be safely kept in prison in close and secure custody, without bail, living at his or her own costs, until such person shall satisfy such debt and damages; and if any such sheriff or other officer, shall permit any such person so arrested or committed, to go out of prison, or be at large by bail or otherwise, without the assent and agreement of the plaintiff, or party in whose favor such execution may be, such sheriff or other officer shall thereby become answerable to such plaintiff or party for the debt and damages for which such person was arrested or committed, and the plaintiff or party may recover the same with costs by action of debt, against such sheriff or other officer.

Prisoners in execution how to be kept.
K and R v. 1
213 § 18

Liable for escapes, etc.
21. Westm. 2
13 Ed. 1 c. 11
1 R. 2. c. 12
5 Ann. c. 9
[A. 17 c. 239
Cain's R. 1
134—2 John.
ca. 13, 205, 359,
also cases cited
in the act relative
to gaols,
etc.]

XX. *And be it further enacted*, That if any writ shall be granted commanding the sheriff or keeper of the prison where any per-

By action of debt with costs
2 John. Rep.
484

Prisoners in execution brought up by *habeas corpus*, etc.
K. & R. v. 1.
 § 213 § 19
 2 H. & St. L.
 c 2

Remain in prison, etc.

Prisoners on *mesne* or *final* process or on attachments, etc.

K. & R. v. 1.
 § 213 § 19
 References *supra*.

As if at large charged an escape.

6 John. Rep. 28, 270—7 Ib. 137—9 Ib. 329

Unless by *habeas corpus*, or rule of court.

2 John. Rep. 433

Sheriff, etc. corruptly suffering an escape, etc.

K. & R. v. 1, § 213 § 31

References *supra*
 8 and 9 W. 3. c 27—4 Geo. 2. c 31

Retaking on fresh pursuit, how and when pleaded.

K. & R. v. 1, § 213 § 23

8 and 9 W. 3. c 27

1 Caines's Rep. 181

Penalty for false swearing

Creditor may have new execution, etc.

K. & R. v. 1, § 213 § 23

8 and 9 W. 3. c 27

Sheriff, etc. to deliver prison-

son shall be so charged in execution for any debt or damages aforesaid, to have the body of such prisoner, with the cause of his imprisonment, in the chancery or in any other court, or before the chancellor or any judge, and it be returned upon the said writ that such prisoner is charged in execution as aforesaid, then and in every such case, such prisoner shall be immediately remanded and shall remain in prison according to law, without being let to bail against the will of the party in whose favor such prisoner shall be so charged, until satisfaction be made for the sum adjudged.

XXI. *And be it further enacted*, That all prisoners, either upon contempt or *mesne* process or in execution, who shall be committed to any prison, shall be actually detained within such prison until they shall be from thence discharged by due course of law; and if at any time the keeper of any prison shall permit or suffer any prisoner committed to his custody, either upon contempt or *mesne* process, or in execution, to go or to be at large out of his prison, except by virtue of some writ of *habeas corpus*, or rule of court, which rule of court shall not be granted, but on motion made, or petition read in open court, every such going or being out of the said prison, shall be adjudged and is hereby declared to be an escape.

XXII. *And be it further enacted*, That if any sheriff or keeper of any prison, shall take any sum of money, reward, or gratuity whatsoever, or any security for the same, to procure, assist, connive at or permit any escape of any prisoner in his custody, and shall be thereof lawfully convicted, every such sheriff or keeper shall for every such offence, forfeit the sum of one thousand two hundred and fifty dollars, and his said office, and be forever-after incapable of executing the said office.

XXIII. *And be it further enacted*, That no retaking on fresh pursuit shall be given in evidence on the trial of any issue in any action of escape against any sheriff or keeper of any prison, unless the same shall be specially pleaded, or notice thereof in writing be given with the general issue; and no such special plea of retaking on fresh pursuit or plea of the general issue, with notice of such special matter, shall be received or allowed unless oath be made in writing, by such sheriff or keeper of any prison against whom such action shall be brought, and filed with such plea, that the prisoner for whose escape such action is brought, did, without his consent, privy or knowledge, make such escape; and if such affidavit shall at any time afterwards appear to be false, and such sheriff or keeper of any prison shall be convicted thereof by due course of law, he shall forfeit the sum of one thousand two hundred and fifty dollars.

XXIV. *And be it further enacted*, That if any person who shall be taken on any execution or committed thereon to any prison, shall escape by any ways or means howsoever, the creditor at whose suit such prisoner was taken or charged in execution, may retake such prisoner by any new *capias* or *capias ad satisfaciendum*, or sue forth any other kind of execution on the judgment as if the body of such prisoner had never been taken in execution.

XXV. *And be it further enacted*, That every sheriff, officer, or

keeper of any gaol, upon whom any copy of a declaration against any prisoner in his custody, by virtue of any process out of any court of record, shall be served, shall within ten days thereafter deliver the same to the defendant or defendants named therein, with a note of the time of the service thereof upon such sheriff or officer as aforesaid; and if any such sheriff, officer or keeper, whom any such copy of any declaration shall be delivered as aforesaid, shall neglect to deliver the same as aforesaid, he shall be answerable to such defendant or defendants for all damages occasioned by such neglect.

XCVI. *And be it further enacted*, That no action shall be brought or maintained against any sheriff, coroner, or other officer, for the escape of any person, imprisoned on civil process, unless the same be brought within one year from the time of such escape.

CHAP. LXIX.—(R.L.)

An ACT relative to Gaols.

Passed April 6th, 1813,

[Gr. v. 1. 1. 339, 410.—J.&V. v. 2. 48.—K.&R. v. 1. 358.—W. v. 5. 336, &c.—Sessions as in margin]

I. *BE it enacted by the people of the state of New-York, represented in Senate and Assembly*, That the building now established and used as the gaol of the city of New-York, for the confinement of persons on civil process, shall be, and continue the gaol of the said city, for the confinement of such persons. And, that the part of the bridewell in the said city now established, and used as the gaol of the said city, for the confinement and safe-keeping of all persons charged with or convicted of any crime or misdemeanor, except persons sentenced to imprisonment in the state-prison, shall be, and continue the gaol of the said city, for the confinement and safe keeping of such persons; and the gaol last aforesaid shall be under the charge of the mayor, aldermen, and commonalty of the said city; and the said mayor, aldermen, and commonalty, in common council convened, shall, from time to time, appoint some proper person to be keeper of the same, who shall hold his office during the pleasure of the said common council, and shall be called the keeper of the city prison of the city of New-York: And all commitments of offenders shall be to the keeper of the city prison of the city of New-York: And the said keeper shall keep all persons committed to him as aforesaid in the same manner, and under the same penalties as the sheriffs of the other counties in this state, ought, by law, to keep in the gaols of the respective counties the criminals committed to them.

II. *And be it further enacted*, That the buildings now established, and used as the gaols of the counties of Suffolk, Queens, Kings, Richmond, Westchester, Rockland, Orange, Dutchess, Ulster, Delaware, Greene, Columbia, Rensselaer, Washington, Essex, Clinton, Schenectady, Saratoga, Montgomery, Schoharie, Herkimer, Oneida, Jefferson, Lewis, St. Lawrence, Onondaga,

ers copies of
declarations
served on
them for such
prisoners.
K. & R. v. 1
2:3, § 4
4 and 5 W. &
M. c. 31
and 9 W. 3.
o 57
And shall be
answerable,
etc.

Limitation of
suits brought
for escape.
Hess. 33. c 187
§ 2
50 Geo. 2. c. 57
27

Gaol and
bridewell of
New York to
continue such.
K. & R. v. 1, 358
§ 1
14 Ed. 3. st. 4
c. 10
19 H. 7. c. 10
5 Ann. c. 9.
13 H. 3 st. 1
c. 15
23 H. 8. c. 3
5 El. c. 24
11 & 12 W. v. 3
c. 19
Bridewell under
the charge
of the corporation.
17 Geo. 2. c. 5
18 El. c. 3
7 Jac. 1. c. 4
15 Geo. 2. c.
24 &c.
Keeper thereof

His duties

Gaols in the
other counties
to continue
such
K. & R. v. 1 349
§ 2
Vide supra

daga, Otsego, Chenango, Tioga, Broome, Cayuga, Seneca, Steuben, Allegany, Ontario, Genesee, Niagara, the city and county of Albany, and the gaol in the town of Salem, in the county of Washington, shall be and continue the gaols of the said cities and counties respectively.

Certain other
gaols to be
the gaols of
other counties
Sess 31. c. 40
§ 14
Sess 31. c. 43.
§ 3
Sess 31. c. 194.
§ 5
Sess 29, c. 70
§ 6
Sess 33. c. 80
§ 8
Sess 35. c. 143
§ 9

III. *And be it further enacted*, That it shall be lawful for all courts and officers of the county of Sullivan, in all cases civil and criminal, to confine their prisoners in the gaol of the county of Orange, until a gaol shall be erected in the said county of Sullivan; and for all courts and officers of the county of Putnam, in all cases civil and criminal, to confine their prisoners in the gaol of the county of Dutchess; and for all courts and officers of the county of Madison, in all cases civil and criminal, to confine their prisoners in the gaol of the county of Oneida; and for all courts and officers of the county of Cortlandt, in all cases civil and criminal, to confine their prisoners in the gaol of the county of Onondaga; and for all courts and officers of the county of Chatauque, in all cases civil and criminal, to confine their prisoners in the gaol of the county of Niagara; and for all courts and officers of the county of Franklin, in all cases civil and criminal, to confine their prisoners in a room of the academy, in the Township of Malone, in said county, or in the gaol of the county of Clinton, at their election, until gaols be erected in those counties respectively: *Provided nevertheless*, That as soon as the sheriffs of the said counties of Sullivan, Putnam, Madison, Cortlandt, Franklin and Chatauque, shall deem the gaols directed or to be directed to be built in those counties sufficiently finished for the safe keeping of prisoners, the same shall from thenceforth be the gaols of the said counties respectively; and the respective sheriffs shall remove their prisoners to the said gaols; and such removal shall in no manner be construed an escape.

Proviso

Liberties of
gaols declared
R. & R. v. 1, 349
§ 8
Sess 26. c. 100
Sess 32. c. 148
§ 8
Sess 35. c. 114
§ 6
Tidd's Pract.
969. 960
30 Geo. 3. R.E
35 Geo. 3
26 Geo. 3
Barry & al. vs
Mandell, as-
signee, &c.
Court of Ex-
cheq. sess. of
1813

IV. *And be it further enacted*, That the liberties of the gaols of the said counties respectively, including the city and county of New-York and the city and county of Albany, as the same have already been established according to law, by the courts of common pleas of the said counties respectively, shall be the liberties thereof, as well in counties where gaols are not erected as others, subject to be altered by the judges of the said courts of common pleas of the respective counties, in their discretion, not oftener than once in every year; and where the same have not already been so done in any county, it shall be lawful for the court of common pleas of such county to appoint a certain reasonable space of ground adjacent the gaol or gaols of such county, to be denominated the liberties thereof, subject to be altered as aforesaid; and such court shall cause the same liberties and their limits to be designated by inclosures or posts, or other visible marks, placed on the outer lines of the said liberties as to them shall seem proper; and the extent of such liberties to be entered on their minutes, which extent shall in no instance, except in the counties of Franklin, Clinton and Essex, comprehend a larger space than one hundred and sixty acres, to be laid out in a square or parallelogram, as near as may be; and it shall be lawful for the courts of common pleas in the respective cities and

counties where the liberties of the gaols have already been established according to law, to alter and extend the said liberties respectively, so that the said liberties shall in no instance be extended to comprehend a larger space than one hundred and sixty acres, to be laid out as aforesaid.

V. *And be it further enacted*, That it shall be lawful for the several courts of common pleas, in the said counties of Franklin, Clinton and Essex, to enlarge the liberties of the gaols in the said counties, at their discretion, provided the limits thereof shall not extend, in any direction, to a greater distance, than half a mile from the court-house in each of the said counties.

VI. *And be it further enacted*, That it shall be the duty of the sheriffs of the respective counties to permit any prisoner who shall be in their custody on civil process only, or on being surrendered in discharge of bail in any civil action to go at large within the limits of the respective liberties as aforesaid appointed: *Provided*, such prisoner confined on civil process shall procure and offer to the sheriff in whose custody he shall be, a bond with one or more sufficient sureties in the penalty of double the amount of the sum for which such prisoner is confined; and in case such prisoner hath been surrendered in discharge of his bail, then on procuring and offering to the sheriff in whose custody he shall be, a bond with one or more sureties in the penalty of double the amount of the judgment or sum mentioned in the suit, in the action in which such prisoner shall be so surrendered, conditioned that such prisoner shall remain a true and faithful prisoner, and shall not at any time nor in any wise escape* or go without the limits of the liberties aforesaid, until discharged by due course of law: *And provided further*, That it shall be lawful for any such sheriff in case he shall discover to his satisfaction any bail so taken to be insufficient to confine any prisoner so admitted to the benefit of the liberties in the gaol until other good and sufficient bail for the liberties be offered, and every such surety shall be an inhabitant and freeholder within the county where such prisoner shall be confined; and every bond so taken is hereby declared to be valid in law, and to be for the indemnity of such sheriff only; and that any sheriff who may let any prisoner in his custody upon civil process only, or on being surrendered in discharge of his bail, go at large within the limits of the liberties aforesaid, shall not be deemed to have incurred an escape: *Provided always*, That nothing in this act contained shall be construed to exonerate the said sheriffs in case any such prisoner shall escape and go at large without the said limits.

VII. *And be it further enacted*, That all such bonds as aforesaid are hereby declared to be assignable, and the same shall be assigned by the sheriff or other officer taking such bond, and in

Liberties in certain counties how to be enlarged
Secs 28. c 102
§ 1
Secs 32. c 79
§ 4
Secs 34. c 219
§ 1
Duty of sheriffs, &c.
KKk. v 1. 306
§ 6
Secs 33. c 64
Fide supra

Bond to be given

Sheriff may require new surety if the former be insufficient

Operation of such bonds
Fide supra

Proviso.

Bonds declared to be assignable
W v 4, 509

[* The whole doctrine of escapes illustrated and settled by the court of Errors in the session of 1813—vide the case of Barry. and *alii* vs. Mandell, assignee, &c.—The former decisions are, 1 Caines's Rep. 181—2 John. ca. 3, 205, 239.—3 Ibid. 73—1 John. Rep. 214—2 Ibid. 433, 454—4 Ibid 45, 469—5 Ibid. 89, 115, 182, 256, 337—6 Ibid. 22, 51, 62, 121, 158, 270—7 Ibid. 137, 159, 165, 168, 175, 178, 189, 477—8 Ibid. 207, 366, 369, 379, 472—9 Ibid. 83, 85, 146, 234, 292, 300, 329, 369.]

Secs 32, ch
148 § 1
Secs 34, c 238
§ 5

How & when
assignable

Assignee may
sue thereupon
in his own
name

Recovery
deemed a bar
to other suits

Proceedings
against sheriff
may be stayed
till bond be
sued
W. v S. 509
Secs. 32 c
140, sec. 2

If sheriff sue
on the bond he
shall recover
the amount
due in the ori-
ginal action
W. v S. 509
Secs. 32. c 148
§ 3

Sheriff may
avail himself
of the defence
at common
law
Secs 33, c 187
§ 3

Gaol for debt-
ors in Wash-
ington
W. v S. 520
Secs 32, c 163
§ 1

Provided.

case of the death of the sheriff or other officer previous to the making an assignment thereof, then the executors or administrators of such sheriff or other officer shall, on demand, assign every such bond to the respective parties, their attorneys or representatives at whose suit any person or persons giving such bond shall be confined upon the request and at the costs of such party or his representatives, and the same shall be made by endorsement on such bond under the hand and seal of the sheriff or other officer to whom such bond shall have been given in the presence of two or more credible witnesses, and the party to whom such assignment shall be made, shall and may maintain an action thereon as assignee of such sheriff or other officer; and upon obtaining judgment therein shall recover the amount due in the original action in which the person or persons giving such bond shall have been charged in execution, together with interest and all costs accrued thereon; and that a recovery in such action on a bond so assigned shall be a bar to any action brought or to be brought by or on behalf of the person receiving such assignment against the sheriff or other officer assigning the said bond for any negligent escape of the person or persons so charged in execution which may have taken place before the executing of the said assignment.

VIII. *And be it further enacted*, That in case any party at whose suit any person shall be confined within the liberties of any gaol, shall neglect or refuse to take an assignment as aforesaid, it shall be lawful for the court in which any action shall be prosecuted against any sheriff or other officer for the negligent escape of any person who shall have given such bond as aforesaid after judgment in such action, by rule or order of the same court to stay all proceedings thereon until such sheriff or officer shall have had a reasonable time to obtain judgment and collect the amount ascertained to be due in such action on the bond given for the said gaol liberties, and this provision shall extend as well to suits now pending as to those hereafter to be commenced,

IX. *And be it further enacted*, That in all suits prosecuted on any such bond by the sheriff or other officer to whom the same shall be given, if the condition thereof be broken, the damages to be recovered in such suit shall be the amount due in the original action, in which the person or persons giving such bond shall have been charged in execution with interest and costs.

X. *And be it further enacted*, That nothing in this act contained shall be so construed as to prevent any sheriff, coroner or other officer, in cases of escapes from availing himself as at common law of a defence arising from a recaption on fresh pursuit, and a returning of the prisoner within the custody of such officer before an action shall be commenced for the escape.

XI. *And be it further enacted*, That one of the lower rooms in the north-east quarter of the court-house at Sandy Hill, in the county of Washington, (which rooms are constructed and finished for the safe-keeping of prisoners) shall be a gaol for the confinement of persons on civil process, and none others: *Provided always*, That the sheriff of said county shall think proper to make use of the same for that purpose and not otherwise.

XII. *And be it further enacted*, That it shall be lawful for the court of common pleas of the county of Washington, at any term of the said court, or any three judges of the said court out of term, to designate and establish the liberties of the gaol aforesaid at Sandy Hill, in the manner prescribed in the fourth section of this act: *And further*, That it shall be the duty of the sheriff of the said county to permit every prisoner who shall be in his custody on civil process only, to go at large within the limits of the said liberties under the same provisions and restrictions as are specified in the sixth section of this act.

Liberties of the gaol at Sandy Hill
W. v. S. 530
Sess 32. c 162
§ 2, 3

XIII. *And be it further enacted*, That it shall be lawful for the sheriff of the county of Washington, after the liberties of the said gaol at Sandy Hill are designated and established according to this act, to imprison persons against whom he shall have civil process in either of the gaols or liberties in said county: *Provided nevertheless*, That in those instances where bonds for the liberties are given to the sheriff according to law, the debtor may designate the gaols and liberties in which he elects to be confined.

Sheriff may imprison debtors in either of the gaols in Washington
W. v. S. 530
Sess 32. c 162
§ 4

XIV. *And be it further enacted*, That whenever a person is confined within the gaol liberties established in the village at Sandy Hill, in the county of Washington, and it shall become proper for the sheriff to confine such imprisoned debtor within the walls of the prison, in such case, it shall be lawful for the sheriff to remove such person to the gaol in the town of Salem, in the said county, and such removal shall not be deemed an escape.

Debtors may be removed from Sandy Hill gaol to Salem gaol
Sess 33. c 193
§ 27

XV. *And be it further enacted*, That the sheriff of the county of Washington, for the time being, be, and he is hereby appointed a commissioner to superintend that portion of the courthouse at Sandy Hill, not under the care and direction of the sheriff, to rent the same, also to receive, and if necessary to sue for and recover the rents for and in behalf of the said county; and it is hereby made the duty of such commissioner to account with the supervisors of said county for such receipts, when he shall be thereunto required, deducting for his services so much therefrom as the supervisors shall think just and reasonable.

Sheriff to have charge of Sandy Hill gaol, to account for rents, etc.
W. v. S. 530
Sess 33. c 162
§ 6

XVI. *And be it further enacted*, That it shall and may be lawful for the judges and assistant justices of the court of common pleas for the county of Sullivan, to survey and mark out the gaol liberties thereof, at and adjoining the place designated by law as the site for the court-house and gaol, in the same manner as in the opinion of them or a majority of them would be necessary if the said gaol was already erected; and that it shall and may be lawful for the sheriff or any other officer of the said county to confine his or their prisoners therein: *Provided*, such prisoner shall be entitled to the privilege of gaol liberties, any law to the contrary notwithstanding.

Liberties in Sullivan county
Sess 34. c 166
§ 9

XVII. *And be it further enacted*, That the judges and assistant justices of the county of Chataouque shall have power to establish gaol liberties in said county for the purpose of receiving such debtors as shall not be subject to close confinement, previous to the building of the gaol of said county.

The like in Chataouque
Sess 34. c 115
§ 2

If gaol be destroyed by fire, the gaol in some other county to be designated, &c. how and by whom, etc.
W. v. s. 102
Sess. 30. c. 89
§ 1, 2

XVIII. *And be it further enacted,* That in case the gaol or prison of any county within this state hath been or shall hereafter be destroyed by fire or otherwise, or rendered unfit for the confinement of prisoners, it shall and may be lawful for the judges of the court of common pleas of such county or any two of them, on the application of the sheriff, by warrant under their hands and seals, to designate the gaol of some other county as the prison for their said county for the confinement of criminals and debtors or either of them, or any one or more of them as shall be expressed in such warrant; and that from the granting of such warrant the gaol so named, together with the limits thereof, shall, to all intents and purposes as far forth as such warrant may extend, be considered and held to be the proper gaol or prison for such county: *Provided nevertheless,* That it shall and may be lawful for the court of common pleas of such county at any time after the granting of such warrant on the application of the sheriff to modify or annul the same as occasion may require, and from time to time to act in the premises.

Proviso

When rebuilt prisoners to be removed into it.
W. v. s. 102
Sess. 30. ch. 89.
§ 3

XIX. *And be it further enacted,* That as soon as such gaol or prison shall be re-built or rendered fit for the confinement of prisoners, the powers hereby given to the courts of common pleas and the judges thereof shall cease and be no further exercised; and it shall be the duty of the sheriff forthwith to remove the persons in his custody and so confined without his county to his proper gaol.

Duty of sheriff of the county where gaol is designated.
W. v. s. 102
Sess. 30. ch. 89.
§ 4

XX. *And be it further enacted,* That a copy of such warrant or order shall be served on the sheriff, under-sheriff, or gaoler, of the county in which the gaol shall have been designated as aforesaid; and that from thenceforth it shall be the duty of such sheriff, under-sheriff, or gaoler, to receive into the prison of the county, and safely keep all such persons as may come within the terms and intent of such warrant or order; and the said sheriff, under-sheriff, or gaoler, as far forth as it respects the persons so to be delivered to them, shall, to all intents and purposes in the law be deemed the sheriff, under-sheriff, or gaoler, of the county for which such warrant or order shall be made.

Tavern in Genesee gaol.
Sess. 34. ch. 100

XXI. *And be it further enacted,* That all that part of the court-house in the county of Genesee, called the hotel part of the said court-house, not granted by the Holland land company to the said county, may be kept as a public inn or tavern, any law to the contrary notwithstanding.

Gaol of Albany county.
Sess. 35. ch. 187
§ 2

XXII. *And be it further enacted,* That the present gaol of the city and county of Albany shall continue the gaol of the said city and county until the new gaol shall be completed: *Provided,* The time hereby allowed shall not exceed three years.

No spirituous liquor, etc. allowed in New-York or Albany gaols.
K&R. v. l. 360.
§ 7

XXIII. *And be it further enacted,* That no spirituous liquors shall, upon any pretence whatsoever, be sold within either of the gaols of the city and county of New-York, or within the gaol of the city and county of Albany, nor shall any kind of spirituous liquors, except beer, of the quality commonly called table-beer and cider, be brought into either of the said gaols for the use of any person therein confined, without the permit herein after mentioned.

XXIV. *And be it further enacted,* That it shall be lawful for the mayor of each of the said cities, occasionally to appoint one or more physicians in each of the said cities, who are hereby authorised, in cases where they may deem the same necessary or useful, to grant permits in writing, under their hands, to any person confined in the said gaols, to procure and bring into the same such quantity of spirituous liquors as they may think proper.

Without a permit from the physician.
R & R v 1 361
§ 8

XXV. *And be it further enacted,* That it shall be the duty of the sheriffs of the said cities, and keepers of the city-prison of the said city of New-York, having the custody of the said gaols respectively, to prevent the use of spirituous liquors therein, contrary to this act, and if the sheriff of either of the said cities, or the keeper of the city-prison of the said city of New-York, shall knowingly, suffer or permit any spirituous liquors to be sold or used in their respective gaols, contrary to this act, and be thereof convicted before the supreme court, or court of oyer and terminer, he shall for every such offence forfeit two hundred and fifty dollars, for the use of the people of this state.

Sheriffs of N. York and Albany to prevent the use of spirituous liquor in their gaols.
R & R v 1 361
§ 9

XXVI. *And be it further enacted,* That it shall not be lawful to keep an inn or tavern, in any building occupied as a gaol, of any of the counties of this state, except in the case before mentioned; and it shall be the duty of the sheriff and gaoler of every county in this state, to prevent the use of spirituous liquors by prisoners committed on criminal process; and if any such sheriff or gaoler shall deliver to any such prisoner confined in his custody, or knowingly or willingly permit any person to deliver to such prisoner any spirituous liquors, or shall permit or suffer the same to be used (except in cases of sickness, and by order in writing of the attending physician) he shall be deemed guilty of a misdemeanor, and punished by fine and imprisonment, or both, at the discretion of the court before whom such conviction is had, such fine, not exceeding twenty-five dollars, and imprisonment, not exceeding one month for each and every offence.

No inn allowed in any gaol, unless in those admitted by law.
W. v 5, 336
Sess 31, c 156
§ 31
Criminals prohibited the use of spirits, etc.

Penalty on sheriffs, etc.

XXVII. *And be it further enacted,* That it shall be lawful for the sheriff of the county of Oneida to imprison persons against whom he shall have process in either of the gaols of the said county: *And further,* That it shall and may be lawful for the said sheriff to remove prisoners confined on criminal process from the one of said gaols to the other whensoever it shall be necessary, for the appearance or trial of such prisoners, and such removal shall not be deemed or construed an escape.

Either of the Oneida gaols places of confinement for prisoners.
Sess 26, ch. 106
§ 4, 6

XXVIII. *And be it further enacted,* That it shall and may be lawful for the sheriff of the county of Tioga to confine his prisoners in either of the gaols of said county: *Provided,* The said gaols are, in the opinion of the said sheriff, sufficient for that purpose: *And provided further,* That if both the said gaols shall be sufficient for the safe keeping of his said prisoners, it shall then be the duty of the said sheriff to confine his prisoners in the gaol situated within the jury-district whereof such prisoners may have been residents at the time judgment was rendered against them.

The like as to Tioga
Sess 35, ch. 114
§ 6
Proviso

Further proviso

XXIX. *And be it further enacted,* That it shall and may be lawful for the gaoler of the gaol of the city and county of New-

Fees of gaoler of N. York in criminal cases

Sess. 32. ch. 93

York, to ask, demand and receive, of and from every person committed to his custody within the said gaol, upon, or by virtue of any warrant, execution, mittimus, or commitment, issued out of, or from the court of the justices of the peace, in and for the city of New-York, for any sum exceeding twenty-five dollars, fifty cents; and also the like fees for bringing up a prisoner by any rule or order of any court as are now allowed by law to a sheriff for bringing up a prisoner on habeas corpus in civil causes.

Liberties of
N. York gaol
confirmed
Sess. 32. ch. 148
§ 4

XXX. *And be it further enacted*, That the liberties of the gaol of the said city and county of New-York, as now established by the court of common pleas, called the mayor's court of the said city, are hereby ratified and confirmed, and are declared to have been legal and correct, and the same shall remain the liberties of the gaol of the said city and county until otherwise altered according to the provisions of this act.

CHAP. LXIII.—(R.L.)

An ACT concerning Distresses, Rents, and the Renewal of Leases.

Passed April 5, 1813.

[J.&V. v. 2. 253.—Gr. v. 2. 63, 64.—K.&R. v. 1. 134.—Sess. 31. c. 202.]

All distresses
to be reasonable

K. and R. v. 1.

134 § 1

On pain of
fine, etc.

St. Marfb. 23.

H. 3. c. 3 15

1K 2 Ph. & M.

c. 12

St. Westm. 1

3 Ed. 1. c. 16

9 Ed. 2. st. 1. c. 9

21 H. 3. st. 4

3 Ed. 1. c. 23

No distress to

be taken

wrongfully,

etc. or in the

highway, etc.

K. and R. v. 1.

134, sec. 3

References

et supra.

And how

quashable.

Beasts of the

plough, etc.

not to be dis-

trained unless

other distress

cannot be

stated.

K. and R. v. 1.

134, sec. 3

21 H. 3. st. 4

4 John. Rep.

135

Beasts to be

put in open

pound in the

same county.

K. and R. v. 1.

134, sec. 4

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That all distresses made or taken for any cause whatsoever, shall be reasonable, and not too great; and whosoever shall take great and unreasonable distresses, shall be punished by fine for the excess of such distresses, and shall answer the damages to the party agrieved, in an action of trespass, or on the case, at his election. But no other or further damages shall be recovered, than is provided for in similar cases by the tenth section of this act.

II. *And be it further enacted*, That no person shall take any distress wrongfully, or distrain in the highway or common street, or cause any distress that he shall take, to be driven out of the county where it shall be taken; and every person who shall so do of his own authority, and without judgment, shall be punished by fine, as for a thing done against the peace, and shall answer to the party agrieved in an action of trespass, or on the case, as in the preceding section is directed.

III. *And be it further enacted*, That no person shall be distrained for any cause whatsoever by his beasts of the plough, or sheep, or by the implements of his trade, until other distress or chattels whereof the debt may be levied, or sufficient for the demand cannot be found, (except the distraining and impounding beasts found on the ground of any person damage feasant) according to the custom of this state.

IV. *And be it further enacted*, That when any beasts are distrained, for any cause whatsoever, they shall be put in open pound in the same county, where they shall be taken; and they

to whom the beasts do belong, may give them their feeding without disturbance, so long as they shall be impounded.

V. *And be it further enacted*, That where any goods or chattels shall be distrained, for any rent reserved and due upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained, shall not, within five days next after such distress taken, and notice thereof (with the cause of taking) left at the chief mansion house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff according to law, that then, in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the sheriff or under sheriff of the county, or with the constable or other officer of the town or place where such distress shall be taken, (who are hereby required to be aiding and assisting therein) cause the goods and chattels so distrained, to be appraised by two sworn appraisers, (whom such sheriff, under sheriff, constable, or other officer as aforesaid, are hereby empowered to summon for that service, and to swear well and truly to appraise the same, according to the best of their understanding,) and after such appraisement, shall and may lawfully sell at public vendue, the goods and chattels so distrained, for the best price that can be gotten for the same, (giving three days public notice thereof) towards satisfaction of the rent for which the said goods and chattels shall be distrained and of the charges of such distress, appraisement and sale; leaving the overplus (if any) in the hands of the said sheriff, under sheriff, constable, or officer for the owner's use.

VI. *And be it further enacted*, That it shall be lawful for any person having rent in arrear, and due upon any such demise, lease or contract as aforesaid, to seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack or rick, or elsewhere, upon any part of the land charged with such rent, and to lock up or detain the same, in the place where the same shall be found, for and in the nature of a distress, until the same shall be replevied, upon such security to be given as aforesaid; and in default of replevying the same as aforesaid, within the time aforesaid to sell the same, after the appraisement thereof in manner as above directed: *And further*, It shall be lawful for such landlord or lessor, to take and seize as aforesaid, any cattle or stock of such tenant, feeding or depasturing upon any common appendant, or appurtenant, or in any ways belonging to the premises, demised or holden; and also take and seize all sorts of corn and grass, roots or other produce, growing or being thereon, as distress for arrears of rent, and the same to cut, gather, make, cure, carry, and lay up in some convenient place on the premises, and for want thereof, in some other place, to be procured by such landlord, (due notice of such place being given to such tenant or lessee, or left at his place of abode) and within the time, and in the manner herein before directed, to appraise, sell or dispose of the same.

3 John. Rep.
191—53 H. 3.
c 4—1 N. 3
Ph. & M. c. 18
3 Ed. 1 c 10
9 John Rep 137
Proceedings
on a distress
for rent.
K. and R. v 1
134, see 5
2 W. and M.
c 5—11 Geo. 2
c 19
1 John. c. 247

Sheaves of
corn, etc. may
be distrained.
K. and R. v 1.
134, see. 6

How to be
disposed.

2 W. and M.
c 5, see. 3

If not replevied
ed to be sold.

Cattle, etc.
feeding on a
common, etc.
distrainable.
11 Geo. 2 c 19

Also, corn,
grass, etc. and
distraints may
cut and gather
it, etc.

Distress may be impounded or otherwise secured etc. K. and R. v 1 134, sec. 7 71 Geo. 2 c 19

VII. *And be it further enacted*, That it shall be lawful for any person, lawfully taking any distress, to impound or otherwise secure the distress so made, of whatever nature or kind it may be, in such place, or on such part of the premises, as shall be most convenient for the purpose, and to appraise, sell and dispose of the same, upon the premises, in like manner, as any person taking a distress for rent, may do off the premises by virtue of this act; and it shall be lawful for any person to come and go to and from such place or part of the premises, in order to view, appraise and buy, and also to carry off and remove the same.

Treble damages recoverable against persons guilty of pound breach or rescous with cost K. and R. v 1 134, sec. 8 2 W. and M. et. 1. c 5, sec 4

VIII. *And be it further enacted*, That upon any pound breach, or rescous of goods or chattels distrained for rent, the person grieved thereby shall in action of trespass, or in a special action on the case, for the wrong thereby sustained, recover his treble damages and costs of suit, against the offender in any such rescous or pound breach, or against the owner of the goods distrained, in case the same be afterwards found to have come to his use or possession.

Double damages recoverable against distainer if no rent be due. K. and R. v 1 134, sec 9 2 W. and M. c 3, sec 8 1 and 2 Ph. and M. c 12

IX. *Provided always, and be it further enacted*, That in case any such distress and sale as aforesaid, shall be made by virtue or color of this present act, for rent pretended to be in arrear and due, when in truth no rent is in arrear or due to the person distraining, or to him in whose name or right such distress shall be taken as aforesaid, that then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators, shall and may, by action of trespass or upon the case, to be brought against the person or persons so distraining, or any, or either of them, his or their executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit.

Irregularities in distress, not to make distrainer a trespasser *ab initio*, but liable only for the damages sustained. K. and R. v 1 134, sec. 10 71 Geo. 2. c 19

X. *And be it further enacted*, That where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or by his agent, the distress itself shall not be therefore deemed to be unlawful, nor the party making it be deemed a trespasser *ab initio*, but the party agrieved by such unlawful act or irregularity, shall and may recover full satisfaction for the special damages he, she or they shall have sustained thereby and no more, in an action of trespass, or on the case, at the election of the plaintiff: *Provided always*, That where the plaintiff or plaintiffs shall recover in such action, he shall be paid his full costs of suit, and have all the like remedies for the same as in other cases of costs: but that no tenant or lessee, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party distraining, or his agent, before such action brought.

Tender of amends, a bar to the action. 71 Geo. 2 c 19

Persons sued for irregular distress, etc. may plead general issue, and give special matter in evidence. K. and R. v 1 134, sec. 11

XI. *And be it further enacted*, That in all actions of trespass, or upon the case, to be brought against any person entitled to any rents or services of any kind, his bailiff or receiver, or other person, relating to any entry by virtue of this act or otherwise, upon the premises, chargeable with such rents or services, or to any distress or seizure, sale or disposal of any goods or chattels thereupon, it shall and may be lawful to and for the defendant in such

By the equity of 70 8 Ann c. 14 (1728)
(1728) the Cardboard 71.5 cents 10 morins
1728. sequestration 10 (1828)
R. 457, Dixon v. Smith.

actions, to plead the general issue, and give the special matter in evidence; any law or usage to the contrary notwithstanding.—
 And in case the plaintiff shall become non-suited, discontinue his action, or have judgment against him, the defendant shall recover double costs of suit.

11 Geo. 2, c. 19
 2 John. Rep.
 446

XII. *And be it further enacted*, That no goods or chattels whatsoever, in or upon the demised premises, shall be liable to be taken by virtue of any execution, on any pretence whatsoever, unless the party at whose suit the said execution is sued out shall, before the removal of such goods from off the said premises by virtue of such execution, pay to the landlord of the said premises, or his bailiff, all and every sum or sums of money due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution: *Provided*, The sum claimed to be due for and during the whole time of the demise and tenure thereof, shall not exceed in amount a sum equal to the last year's rent thereof, although such arrears might have become due before such year: and in case the said arrears shall exceed one year's rent, then the said party at whose suit such execution is sued out, paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment as he might have done before the making of this act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money.

Rent to be paid before goods be removed by execution against tenant
 K. & R. v. 1, 134
 § 13
 8 Ann. c. 14
 2 John. Rep.
 478

Provided it do not exceed a year's rent

And if more, one year's rent only to be paid by judgment creditor

XIII. *And be it further enacted*, That in case any such lessee for life or lives, term of years, at will or otherwise, shall convey or carry off or from such demised premises his goods or chattels, leaving the rent unpaid, although such goods or chattels might have been conveyed or carried off before such rent shall have become due and payable, it shall and may be lawful for such lessor or landlord, or any person or persons by him for that purpose lawfully empowered, within the space of thirty days next after such conveying away or carrying off such goods or chattels, to take and seize such goods and chattels wherever the same shall be found, as a distress for the said arrears of rent: *Provided*, Such seizure be made after such rent shall have become due and payable, and the same to sell or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such premises, for such arrears of rent, any law, custom or usage, to the contrary in any wise notwithstanding: *Provided nevertheless*, That nothing in this act contained shall extend, or be construed to extend, to empower such lessor or landlord to take or seize any goods or chattels, as a distress for arrears of rent, which shall be sold bona fide, and for a valuable consideration, before such seizure made, to any person not privy to such fraud, any thing herein contained to the contrary notwithstanding.

If tenants remove goods, etc. leaving rent unpaid, landlord may seize them in 30 days after removal.
 K. & R. v. 1, 134
 § 13
 8 Ann. c. 14
 11 Geo. 2, c. 19

Provido, that rent be due when seizure is made

Provido, protecting bona fide sales before such seizure.

And to deter tenants from such conveying away their goods and chattels, leaving the rent unpaid, and others from wilfully aiding or assisting therein, or concealing the same,

Penalty on tenants and others removing goods to defraud landlord of his rent

XIV. *Be it further enacted*, That if any such tenant or lessee shall remove, and convey away his goods or chattels as afore-

K. & R. v. 1.
234 § 14
11 Geo. 2. c 19

said; or if any person shall wilfully and knowingly aid or assist any such tenant or lessee in such conveying away or carrying off any part of his goods or chattels, or in concealing the same, every person so offending shall forfeit and pay to the landlord or lessor, or his heirs or assigns, from whose estate such goods and chattels were so carried off as aforesaid, double the value of the goods by him carried off or concealed as aforesaid, to be recovered by an action of debt, in any court of record.

How sued for
and recovered

If goods so re-
moved are
locked up or
kept, how to
be seized, etc.
K. & R. v. 1. 134
§ 15
Metereous
et supra.

XV. *And be it further enacted*, That where any goods or chattels shall be conveyed or carried away as aforesaid, by any tenant or lessee, or his servant, agent or other person, aiding or assisting therein, and shall be put, placed or kept in any house, barn, stable, out-house, yard, close or place, locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall and may be lawful for the landlord or lessor, or his heirs or assigns, or his steward, balliff, receiver or other person, empowered to take and seize as a distress for rent, such goods and chattels, (first calling to his assistance the constable or other peace officer of the town or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein,) and in case of a dwelling-house, (oath being also first made before some justice of the peace, of a reasonable ground to suspect that such goods or chattels are therein,) in the day time to break open, and enter into such house, barn, stable, out-house, yard, close or place, and to take and seize such goods and chattels, for the said arrears of rent, as he might have done by virtue of this act, if such goods and chattels had been put in any open field or place.

Rent due on a
lease for this
recoverable
by action of
debt
K. & R. v. 1.
134 § 16
8 Ann. c 14
32 H. 8. c 37

XVI. *And be it further enacted*, That it shall be lawful for any person, having any rent in arrear or due upon a lease or demise, for life or lives, to bring an action of debt for such arrears of rent, in the same manner as he might have done in case such rent was due and reserved upon a lease for years.

And whereas tenants *pour autre vie*, and lessees for years or at will, frequently hold over the tenements to them demised, after the determination of such leases: And whereas, after the determination of such or any other leases, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof: For remedy whereof,

Distress allowed
for rent in
arrear when
lease for life is
determined.
K. & R. v. 1.
134 § 17.
32 H. 8. c 37

XVII. *Be it further enacted*, That it shall be lawful for any person having any rent in arrear and due upon a lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as he might have done if such lease had not been ended or determined: *Provided*, That such distress be made within the space of six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

And whereas, by the common law, the executors or administrators of tenants in fee simple, or for term of life, of rent service, rent charge, rent seck and fee farms, have no remedy to recover

such arrearsages of the said rents or fee farms, as were due unto their testators or intestates in their lives, nor may the heirs of such testator, nor the person having the reversion of his estate after his decease, distrain, or have any lawful action to levy any such arrears of rents or fee farms : for remedy whereof,

XVIII. *Be it further enacted*, That the executors or administrators of every such person unto whom any such rent or fee farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearsages, against the tenant who ought to have paid the said rent or fee farms, so being behind in the life time of the testator or intestate, or against the executors or administrators of the said tenant: *And further*, That it shall be lawful for every such executor and administrator of any such person, unto whom such rent or fee farm is or shall be due, and not paid at the time of his death as aforesaid, to distrain for the arrearsages of all such rents and fee farms, upon the lands, tenements and hereditaments, which were, are or shall be charged with the payments of such rents or fee farms, and chargeable to the distress of the testator or intestate, so long as the lands, tenements or hereditaments, continue, remain and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee farm so being behind, to the said testator or intestate, in his life time, or in the seisin or possession of any other person claiming the said lands, tenements and hereditaments, only by or from the said tenant, by purchase, gift or descent, in like manner and form as their testator or intestate might or ought to have done in his life time; and the said executors or administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid, and make appraisement and sale of such distress in the manner aforesaid.

Executors or administrators of persons entitled to rents in fee or for life may sue for arrears of such rents
K & R. v. 1. 134
§ 18
32 H. 8. c 37

Or distrain for the same

XIX. *And be it further enacted*, That if any person who now hath, or shall hereafter have, in the right of his wife, any estate in fee simple, or for term of life, of, or in any rents or fee farms, and the same rents or fee farms now be, or hereafter shall be due, behind and unpaid, in the said wife's life time, then the said husband, after the death of his said wife, his executors or administrators, shall have an action of debt for the said arrearsages against the tenant of the demesne who ought to have paid the same, his executors or administrators: *And further*, That the said husband, after the death of his wife, may distrain for the said arrearsages, in like manner and form as he might have done if his wife had been then living, and make avowry upon his matter as aforesaid, and make appraisement and sale of such distress in the manner aforesaid.

Husbands entitled to such rents in right of their wives may sue for or distrain for such rent after the death of their wives
K & R. v. 1. 134
§ 19
32 H. 8. c 37
7 John. Rep. 81.

XX. *And be it further enacted*, That if any person who now hath, or hereafter shall have, any rents or fee farms, for term of life or lives, of any other person, and the said rent or fee farm now be, or hereafter shall be due, and behind and unpaid, in the life of such person, for whose life or lives the estate of the said rent or fee farm did depend or continue, and after the said person shall die, then he to whom the said rent or fee farm was due in form aforesaid, or his executors or administrators, shall and may have an action of debt against the tenant in demesne, who

Persons entitled to rents for the life of others may sue or distrain for same after the death of such other persons
K & R. v. 1. 134
§ 20
References supra

ought to have paid the same when it was first due his executors or administrators; and also may distrain for the same arrearages upon the lands and tenements out of which the said rents or fee farms were issuing and payable, in such like manner and form as he ought or might have done if the person by whose death the aforesaid estate in the said rents and fee farms determined and expired, were in full life; and the avowry for the taking of the same distress to make in manner and form aforesaid, and make appraisement and sale of such distress in manner aforesaid.

Tenants holding over to pay double rent.
R. & H. v. L.
134 § 21
4 Geo. 2. c. 28

XXI. And be it further enacted, That in case any tenant for any term of life, lives or years, or other person, who is or shall come into possession of any lands, tenements or hereditaments, by, from or under, or by collusion with such tenant, shall wilfully hold over any lands, tenements or hereditaments, after the determination of such term, and after demand made and notice in writing given, for delivering the possession thereof, by his landlord or lessor, or the person to whom the remainder or reversion of such lands, tenements or hereditaments, shall belong, or his agent, thereunto lawfully authorised, then and in such case such person so holding over, shall, for and during the time he shall so hold over or keep the person entitled out of possession of the lands, tenements or hereditaments, as aforesaid, pay to the person so kept out of possession, or his executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements or hereditaments, so detained, for so long time as the same are detained, to be recovered in any court of record in this state, by action of debt, whereunto the defendant shall be obliged to give special bail; and against the recovering of which said penalty there shall be no relief in equity.

[Noticed to quit, etc.
4 John. Rep.
150.
5 Ib. 128.
9 Ib. 257.
4 Ib. 272.
7 Ib. 1. 536.
3 Burr. 1. 09
5 Burr. 2654
1 Esp. cas. 206
2 Black. 1075
2 East. 310
5 Esp. Rep.
205.]

Tenants giving notice to quit and afterwards refusing to pay double rent.
R. & H. v. L. 134 § 28
21 Geo. 2. c. 19
1 John. ca. 231
2 Ib. 363
1 John. Rep.
323
4 Ib. 186, 215

XXII. And be it further enacted, That in case any tenant shall give notice of his intention to quit the premises by him holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof, at the time in such notice contained, that then the said tenant, or his executors or administrators, shall from thenceforward pay to the landlord or lessor, or his heirs or assigns, double the rent or sum which he should otherwise have paid, to be levied, sued for and recovered, at the same time and in the same manner, as the single rent or sum, before the giving such notice, could be levied, sued for or recovered; and such double rent or sum shall be continued to be paid during all the time such tenant shall continue in possession as aforesaid.

And whereas great inconveniencies may happen to lessors and landlords in cases of re-entry for non-payment of rent, by reason of many nicities that attend re-entries at common law; and forasmuch as when a legal re-entry is made, the landlord or lessor must be at the expense, charge and delay of recovering in ejectment, before he can obtain the actual possession of the demised premises; for remedy whereof,

When landlord may sue in ejectment by reason of rent in arrear

XXIII. Be it further enacted, That in all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor to whom the same is due, hath right by law to re-enter for the non-payment

thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises; or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then, affix the same upon the door of any demised messuage; or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments, comprised in such declaration in ejectment; and such affixing shall be deemed legal service thereof; which service or affixing such declaration in ejectment, shall stand in the place and stead of a demand and re-entry: and in case of judgment against the casual ejector, or non-suit for not confessing lease, entry and ouster, it shall be made appear to the court where the said suit is depending, by affidavit, or be proved upon the trial in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor in ejectment had power to re-enter, then, and in every such case, the lessor in ejectment shall have judgment and execution, in the same manner as if the rent in arrear had been legally demanded and re-entry made; and in case the lessee, or his assignee, or other person claiming or deriving title under the said lease, shall suffer judgment on such ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills for relief in equity, within six calendar months after such execution executed; then, and in such case, the said lessee, or his assignee, and all other persons claiming and deriving title under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by writ of error for reversal of such judgment, in case the same shall be erroneous; and the said landlord or lessor shall from thenceforth, hold the same demised premises discharged from such lease or contract; and if on such ejectment, a verdict shall pass for the defendant, or the plaintiff shall be non-suited therein, except for the not confessing lease, entry and ouster, then, and in every such case, such defendant shall have and recover his full costs: *Provided always*, That nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do within six calendar months, after such judgment obtained and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee are and ought to be performed.

XXIV. *And be it further enacted*, That in case the said lessee or his assignee, or other person, claiming any right, title or interest, in law or equity, of, in, or to the said lease, shall within the time aforesaid, file one or more bills for relief in any court of equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he shall, within forty days next after a full and perfect answer shall be

K&R. v 1, 134
§ 23
4 Geo. 2. c 28
3 Caines' Rep
335, 382
3 John. Rep.
44.
1 John. ca.
281
3 Ib. 295
6 John. Rep.
34
7 Ib. 227
Manner of
proceeding.

Proviso—The
right of
mortgagee
not in possession
not barred if he shall
pay arrears of
rent and costs
in 6 months.

No injunction
to issue unless
rent and
costs be bro't
into court.
K&R. v 1, 134
§ 24.
4 Geo. 2. c 28

It is not
deemable on-
ly for actual
profits.

filed by the lessor of the plaintiff in such ejectment, bring into court and lodge with the proper officer, such sum of money as the lessor of the plaintiff in the said ejectment, shall in his answer swear to be due, and in arrear over and above all just allowances; and also the costs taxed in the said suit, there to remain until the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after the execution is executed, the lessor of the plaintiff shall be accountable only for so much and no more as he shall really and *bona fide*, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor of the plaintiff, happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to the possession, shall pay such lessor or landlord what the money so by them made, fell short of the reserved rent for the time such lessor of the plaintiff or landlord held the said lands.

If tenant pay
rent and costs,
ejectment to
cease.
K&R. v 1, 134
§ 22
References
supra
Tenant re-
lieved in equi-
ty, holds with-
out a new
lease.

XXV. *Provided always, and be it further enacted*, That if the tenant, or his assignee shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears; together with the costs, then and in such case, all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee, or his executors, administrators or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he or they shall have, hold and enjoy the demised lands, according to the lease thereof made without any new lease to be thereof made to him or them.

And for making the renewal of leases more easy for the future,

New leases
valid without
surrender of
under leases.
K&R. v 1.
134. § 26.
4 Geo. 2. c 28
3 John. Rep.
370, 394

XXVI. *Be it further enacted*, That in case any lease shall be duly surrendered, in order to be renewed, and a new lease made and executed by the chief landlord, the same new lease shall, without a surrender of all or any the under leases, be as good and valid, to all intents and purposes, as if all the under leases derived thereout, had been likewise surrendered at or before the taking of such new lease; and every person in whom any estate for life, or lives, or for years, shall from time to time be vested by virtue of such new lease, and his executors and administrators shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof; and the under lessees shall hold and enjoy the demised premises respectively, as if the original leases, out of which the respective under leases are derived had been still kept on foot and continued; and the chief landlord shall have and be entitled to such and the same remedy by distress or entry, in and upon the demised premises for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such under lease was derived, as he would have had in case such former lease had been still continued, or as he would have had in case the respective under leases had been renewed under such

X See Swant. 337 &c. (Ex parte
Smyth) 6. I full discussion o' r
o apportionment Grant.

new principal lease, any law, custom, or usage, to the contrary hereof notwithstanding.

XXVII. *And be it further enacted*, That where any tenant for life shall happen to die before, or on, the day on which any rent was reserved, or made payable upon any demise or lease of any lands, tenements or hereditaments, which determined on the death of such tenant for life, that the executors or administrators of such tenant for life shall and may in an action on the case, recover of and from such under tenant of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof respectively.

If tenant for life die before rent falls due, executors etc. may recover a proportionable part.
K. & H. v. 1.
134. sec. 27.
11 Geo. 3. c. 19.
2 John. ca. 17.
24.

And whereas the possession of estates in lands, tenements and hereditaments, is rendered very precarious by the frequent and fraudulent practice of tenants attorning to strangers who claim title to the estates of their respective landlords, or lessors, who by that means are turned out of possession of their respective estates, and put to the difficulty and expence of recovering the possession thereof by actions or suits at law; For remedy whereof,

XXVIII. *Be it further enacted*, That every such attornment of any tenant of any messuages, lands, tenements or hereditaments, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlords or lessors shall not be deemed or construed to be in any wise changed, altered or affected, by any such attornment: *Provided always*, That nothing herein contained shall extend to vacate or affect any attornment made pursuant to, and in consequence of, any judgment at law, or decree, or order of a court of equity, or made with the privity and consent of the landlord or lessor, or to any mortgagee after the mortgage is become forfeited.

Attornments of tenants to strangers void.
K. & H. v. 1.
134. § 28.
11 Geo. 3. c. 19.

XXIX. *And be it further enacted*, That every tenant to whom any declaration in ejectment shall be delivered for any lands, tenements, or hereditaments, shall forthwith give notice thereof to his landlord or his bailiff, or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so demised, or holden in the possession of such tenant to the person of whom he holds, to be recovered by an action of debt to be brought in any court of record within this state.

Proviso, saving those made pursuant to a judgment or decree, or by consent of landlord to a mortgagee.

Penalty on tenant served with an ejectment not giving landlord notice thereof.
K. & H. v. 1. 134.
sec. 30.
11 Geo. 3. c. 19.

XXX. *And be it further enacted*, That it shall be lawful for the court where such ejectment shall be brought, to suffer the landlord to make himself defendant by joining with the tenant to whom such declaration in ejectment shall be delivered in case he shall appear, but in case such tenant shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself and consent to enter into the like rule, that by the course of the court the tenant in possession in case he had appeared ought to have done, then the court where such ejectment shall be brought, shall and may per-

Landlords may be joined with their tenants in defending an ejectment.
K. & H. v. 1. 134.
sec. 30.
11 Geo. 3. c. 19.

mit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector until they shall make further order therein.

Where demises are not by deed, landlords may recover in an action for use and occupation. K. & R. v. 1. 134 sec. 31.

11 Geo. 3. c. 19
2 John. ca. 335
6 John. Rep. 46.

2 Caines' Rep. 25, 374.

2 John. ca. 335.

[No interest on rent in distress allowed. 6 John. Rep. 43.]

Manner of distraining cattle damage feasant on certain lands in Kingston, Ulster county. Sess 31. ch. 202 sec. 3.

And to obviate some difficulties that many times occur in the recovery of rents, where the demises are not by deed,

XXXI. *Be it further enacted*, That it shall be lawful to and for the landlord, or his heirs or assigns, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant in an action on the case, for the use and occupation of what was so held and enjoyed; and if in evidence on the trial of such action, any parol, demise, or any agreement, (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be non-suited, but may make use thereof as an evidence of the quantum of the damages to be recovered.

XXXII. *And be it further enacted*, That in all cases where any cattle or beasts shall be found *damage feasant* on any lot enclosed in fence, within any of the three tracts of upland, commonly called Armhowery, in Kingston, in the county of Ulster, the first, lying between the Green-kill road and a section of the Ulster and Delaware turnpike; the second, between the Albany road and the said turnpike road, and the third lying eastward to the Vauxhall road, leading to the Kingston landing, it shall be lawful for any one of the owners, or possessors of any lot enclosed, within the said tracts, or either of them, to impound such cattle or beasts, and to collect the damage done, as in other cases of distress for the like purpose, according to the laws and ordinances of the town and corporation of Kingston and of this state.

CHAP. LXXIX.—(R.L.)

An ACT relative to the Court of Probates, the Office of Surrogate, and the granting of Administrations.

Passed April 8, 1813.

[B. ed. 15, 16.—S. & L. v. 1. 15.—V. 8. v. 1, 14. 292.—Ibid. v. 2. 707.—Constitution of the State, art. XXVII.—Gr. v. 1. 18, 238, 363.—Ibid. v. 2. 42, 421.—Ibid. v. 3. 393.—J. & V. v. 1. 23, 184, 277.—Ibid. v. 2. 43, 71, 72.—K. & R. v. 1. 317, 443.—W. v. 3. 30, 158. Ibid. v. 5. 188.—Ibid. v. 6. 10.]

Court of probates—its powers.

K. & R. v. 1. 317
13 Car. 2. st. 1 c. 19

23 and 25 Car. 2. c. 10

21 H. 8. c. 5

25 H. 8. c. 9

7 and 8 W. 3 c. 38

2 Bl. Com. 502

Vide also references to the act "concerning executors"

sec. passed April 8, 1813

sec. 311.

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the judge of the court of probates of this state shall be vested with all and singular the powers and authorities, and have the like jurisdiction in testamentary matters, except as is hereinafter otherwise provided, as the governor or commander in chief of the late colony of New-York had and exercised as judge of the prerogative court or court of probates of the said colony, except as to the appointment of surrogates in the several counties, who shall be appointed by the person administering the government of this state, by and with the advice and consent of the Council of Appointment:

Act relative to Ex. & A.D. - folio - 311.-
Relief of creditors against him - 315.-

H. *And be it further enacted*, That the present seal shall continue to be the seal of the said court, and the description thereof deposited and recorded in the office of the secretary of this state, shall there remain as a public record of the same: *And further*, That the said court shall be held in the city or county of Albany, and that the judge and clerk of the said court shall reside within the said city or county. Seal of the court Ke.R. v. R. 317. § 3 Court where held

III. *And be it further enacted*, That it shall be lawful for the person administering the government of this state, by and with the advice and consent of the Council of Appointment, as often as may be necessary, to nominate and appoint a surrogate in each of the counties of this state, who shall hold his office during the pleasure of the said council; and that the surrogates now or hereafter to be appointed, shall in all cases, except as to persons who may not at the time of their decease be inhabitants of this state respectively, have sole and exclusive power to take the proof of the last wills, testaments and codicils of all deceased persons who, at or immediately previous to their death, shall have been inhabitants of the respective counties of such surrogates in whatever place the death of such persons may have happened, and to make and issue probates of the same, and grant letters testamentary thereon, and also to grant letters of administration of the goods, chattels and credits of all such persons dying intestate, or with the wills annexed, where the same shall be requisite, and that such letters testamentary and letters of administration shall be made in the name of the people of this state, and tested in the name of the surrogate who shall grant the same, and be sealed with his seal of office. Surrogate for each county to be appointed. Ke.R. v. L. 317. § 3 Their power

IV. *And be it further enacted*, That each of the surrogates hereafter to be appointed, shall, at his own expense, cause a seal to be made for his office, in case no seal shall already have been provided, with such device as he shall think proper, upon which seal shall be inscribed the name of the county for which it is to be used, and the words "Surrogate Seal," and shall deliver a description in writing of such seal to the secretary of this state, who shall deposit and record the same in his office, and that such seals and the seals of the several surrogates already so deposited and recorded in the said office, shall there remain as public records of this state, and be deemed the seals of office of such surrogates respectively. Surrogate's seal Ke.R. v. L. 318. sec. 4 A description thereof where deposited

V. *And be it further enacted*, That administration of the goods, chattels and credits of any person dying intestate, shall be granted to the widow or next of kin of the intestate, or some of them, if they or any of them will accept the same; and if not, then, except such intestate died within the city and county of New-York, to any other proper person or persons: *Provided however*, That no administration shall in any case be granted until satisfactory proof be made before the judge of the court of probates, or surrogate to whom application for that purpose shall be made, that the person of whose estate administration is claimed, is dead and died intestate. Administration to whom granted Ke.R. v. L. 318. sec. 5 [The surrogate has a discretion to elect any of the next of kin in equal degree and grant him sole administration—2 Cases' ca. in error, 148.] 21 H. 8. c. 5 § 3, 4

VI. *And be it further enacted*, That on every application for letters of administration upon the goods, chattels or credits of any

Citation to the next of kin when to issue
K&R. v. 1.
318. sec. 6

How to be served

In what case to be published and how

In the state paper

and in a paper in the city of New-York

Attorney-general when to have a copy

Surrogates to record wills proved before them
K&R. v. 1.
319. sec. 7
And letters of administration, etc

Wills after recording to be returned, and to whom, etc

Successor of a surrogate to receive all the papers, etc. of the office
K. and R. v 1
319 sec 8

Causes being entered parties to be cited and heard
K&R. v 1.319
sec 9

person dying intestate, other than in the city and county of New-York, by any person not entitled to the same, as next of kin to the intestate, the judge of the court of probates, or surrogate to whom such application shall be made, shall, before the granting of the administration, issue a citation to the next of kin to the intestate, summoning them to appear, and shew cause, if any they have, why the administration should not be granted to the person so applying, which citation shall be served upon the next of kin to the intestate, if to be found in this state, and if not to be found in this state, then a copy of such citation shall be affixed up in some public place in the town where the intestate did reside at the time of his death, at least four weeks before the return thereof; and in case such intestate did not reside within this state at the time of his death, then in case of such application to the judge of probates or any surrogate, other than those in the southern and middle districts of this state, a copy of the citation shall be published in the newspaper printed by the printer for this state for four weeks successively before the return thereof; and in case of such application to any surrogate in the said southern or middle district, such copy shall be published for the like period in some newspaper printed in the city of New-York: and in case it shall be represented that such intestate left no relations entitled to his estate, then a copy of such citation shall also be served upon the attorney-general of this state at least twenty days before the return thereof.

VII. And be it further enacted, That each of the said surrogates shall record, in books to be provided for that purpose at his own expense, all wills proved before him, together with the proof thereof, and all letters testamentary and of administration by him granted with all things concerning the same, which records shall be of the same force as the like records in the office of the judge of the court of probates of this state: *And further,* That all wills proved before the judge of probates or any surrogate shall, upon demand, after the same are recorded, be returned to the person who delivered the same, or in case of his death, insanity, or removal from this state, shall be delivered to any devisee named therein, or to the heirs or assigns of such devisee, on proof of such death, insanity or removal, by the oath of one or more witnesses to be taken before such judge or surrogate.

VIII. And be it further enacted, That upon the death or removal from office of any surrogate, the seal of his office, and all original wills, with all records, books and papers belonging to the said office shall be delivered over to the successor in office upon the oath of the preceding surrogate, or of his executors or administrators in case of his death.

IX. And be it further enacted, That in all cases where a *caused* shall be entered in the office of the judge of the court of probates or of any surrogate, or any objection be made against the proving of any will or granting of administration, such judge or surrogate shall cause the parties and witnesses to be cited to appear before him, and hear and determine the matter in controversy.

and grant such probates, letters testamentary or administrations as shall be agreeable to law.

X. *And be it further enacted*, That the judge of the court of probates and the said surrogates respectively, shall, upon granting administration of the goods of any person dying intestate or with the will of such person annexed, take of the person or persons to whom such administration shall be granted, except where the same be granted to a husband of the goods, chattels and credits of his wife, or to the chamberlain of the city of New-York as herein after mentioned, sufficient bonds to the people of this state with two or more competent sureties in such penalty as such judge or surrogate shall think reasonable, respect being had to the value of the estate, with condition as follows, to wit: The condition of this obligation is such, that if the above bounden administrator (or administratrix as the case may be) of all and singular the goods, chattels and credits of deceased, (with the will of the said annexed, if there be such will, and not administered by as the case may be) do make or cause to be made a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of the said , or into the hands or possession of any other person or persons for the said and the same so made, do exhibit or cause to be exhibited (where such bond shall be taken by the judge of the court of probates) into the registry of the court of probates of this state (but where such bond shall be taken by a surrogate) into the office of the surrogate of the county of , at or before the expiration of six calendar months from the date of the above written obligation; and the same goods, chattels and credits and all other goods, chattels and credits of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said , or into the hands or possession of any other person or persons for the said , do well and truly administer according to law, (or, in case of a will annexed according to the directions and true intention of the testator or testatrix, as the case may be) expressed in the will to the letters of administration granted to the said annexed, and as the law directs: *And further*, when thereunto lawfully required, do make or cause to be made a just and true account of administration; and (in case of intestacy) if it shall hereafter appear that any last will or testament was made by the said deceased, and the executor or executors therein named or any person or persons do exhibit the same and request to have it allowed and approved; then if the said being thereunto required, do render and deliver the letters of administration granted on the estate of the said deceased, to the office from which the same were issued, then this obligation to be void and of none effect, or else to remain in full force and virtue; which bonds shall be valid and pleadable in any court of justice; and in case any such bond or any other bond heretofore given by any administrator or administrators, and his or their sureties on obtaining letters of administration have or shall become forfeited, it shall be lawful for the judge of the court of probates of this state and

Administrators to give bonds
K an 1 R v 1
319 § 10
1 John. Rep
310 311
Exception as to the chamberlain of N. York
21 H. 8 c. 5
22 & 23 Car. 2 c. 10
penalty of the bond and sureties
Condition of the bond

Bonds valid, and if forfeited how sued
K & H: v 1 § 3
sec 10

surrogates granting administration in such cases respectively, to cause the same to be prosecuted in any court of record at the request of any party grieved by such forfeiture, and the monies recovered upon such bond shall be applied towards making good the damages sustained by the not performing the said condition in such manner as the said judge or surrogate (as the case may be) shall by his sentence or decree direct.

Administrators how and before whom to be required to account, to make distribution, and to pay legacies
K & R. v 1 330
Distribution

XI. *And be it further enacted*, That it shall be lawful for the judge of the court of probates of this state, or any such surrogate, to call such administrators to account for and touching the goods, chattels and credits so by them to be administered, and upon hearing, and due consideration thereof, to order and make just and equal distribution of what remaineth clear, after debts, funeral charges and just expenses of every sort, first allowed and deducted according to law; and the same distributions to decree and settle, and to compel such administrators to observe and pay the same by due course of law, and also to hear and determine all causes touching any legacy or bequest in any last will and testament payable or coming out of the personal estate of the testator, and to decree and compel payment thereof, saving to every one the right of appeal.

Decrees of judge of probates and surrogates may be enforced by imprisonment
K & R. v 1 321 sec 11

XII. *And be it further enacted*, That if any person shall neglect or refuse to perform any such sentence or decree of the judge of the court of probates of this state, or any surrogate, it shall be lawful for the said judge or surrogate to cause such person by process directed to any sheriff of any county of this state, to be taken and imprisoned until such person shall perform the same sentence or decree; and every sheriff is hereby directed to cause all such process to be duly executed, and to confine the persons against whom such process shall be issued as in execution, until they shall be delivered by due course of law; and if any sheriff shall neglect his duty therein he shall be answerable to the party grieved, in like manner as he would be answerable upon process of the like nature issuing out of the supreme court.

Penalty for neglect

Witnesses compellable to attend before judge of probates or surrogate
W. v 3. 30
Secs. 25. c. 83
 § 3

And to bring deeds, etc. along with them

Penalty for disobedience

And for refusing to be sworn, may

XIII. *And be it further enacted*, That it shall be lawful for the judge of the court of probates and the respective surrogates of this state, on the request of any person interested, to cause any person from any part of the state to be summoned to appear before such judge or surrogate to be examined and to give testimony and to bring with him deeds or writings respecting any matter cognizable before such judge or surrogate, and to issue process for these purposes; and if any person being subpoenaed, and having received or having been tendered such compensation as is allowed to witnesses for their attendance by law, shall not thereupon appear or bring with him such deeds or writings according to the tenor of the said process, every person so making default, and not having a reasonable and lawful cause for the same, shall forfeit to the party grieved one hundred dollars, to be recovered by an action of debt in any court of record with costs of suit, and shall also yield further recompense to the party grieved according to the loss and hindrance sustained; and if any person summoned to appear as aforesaid, shall refuse to be sworn or to answer, it shall be lawful for such judge or surrogate to

commit him to the gaol of the county where the court of such judge or surrogate shall be holden, until he shall submit to be sworn and to answer. be committed to prison

XIV. *And be it further enacted*, That it shall be lawful for such judge or surrogate, on the application of any person interested, to require any person having the custody or possession of any will to produce the same, to the intent that such will may be duly proved, and on neglect or refusal so to do, to commit the person so neglecting or refusing to gaol, until he shall produce and deliver such will to the said judge or surrogate. The party having the custody of a will may be required to produce it to be proved. W. v 3. 30 Secs. 35. c 83 § 4

XV. *And be it further enacted*, That in all cases of persons dying out of this state, or of persons dying within this state, not inhabitants of this state, their wills may be proved before, and administrations of their personal estates when necessary be granted by, the judge of the court of probates of this state, in the manner heretofore used, as well as by any of the said surrogates. Administration on estates of persons dying out of the state, or not being inhabitants thereof, by whom granted. K. & R. v. 7. 321 sec. 13

XVI. *And be it further enacted*, That in case any surrogate shall be appointed executor of any last will and testament, the probate whereof might otherwise be granted by such surrogate, it shall be lawful for such surrogate to make and sign a renunciation thereof, and to file the same in his office, and then to proceed in respect to the same last will and testament in the same manner as if he had not been nominated as an executor thereof. And if such surrogate shall think proper to act as an executor in the execution of such last will and testament, then the same shall be proved before the judge of the court of probates of this state, who shall grant the probate, and letters testamentary thereon; but every such will and probate, and the letters testamentary thereon, shall be recorded by such surrogate in the book for recording wills in his office. Surrogate when appointed executor may renounce and prove the will. K. and R. v I 321, sec. 13

XVII. *And be it further enacted*, That whenever any person shall die intestate within the city and county of New-York, or when any person not resident within this state, shall die intestate, leaving goods and chattels within the city and county of New-York, whether such intestate shall die within this state or not, and the widow or next of kin, residing within this state shall not apply, within one week thereafter, to the surrogate of the said city and county, or judge of the court of probates, as the case may be, for administration of the goods, chattels and credits of the deceased, such administration shall be granted to the chamberlain of the said city, and his successors in office, who shall take the oath by law appointed to be taken by such administrators, and shall give bond, but without sureties, for the due administration of the said goods, chattels and credits, in the form above directed. How to proceed in case he elects to serve as executor.

XVIII. *And be it further enacted*, That the mayor, aldermen and commonalty of the city of New-York, shall in all cases be responsible for the due administration of such goods, chattels and credits, by their chamberlain. *And further*, That such administration shall be subject to be revoked upon the application of the widow, child, father, brother or sister of the deceased, if such application be made within three calendar months after the same Chamberlain of N. York, when to be appointed administrator K. and R. v 1 321, sec. 14 W. v 3. 30 Secs. 35. c 83 sec. 2

shall have been granted, and the balance, if any due to the said administrator be first paid.

Chamberlain
when and to
whom to ac-
count.
K. and R. v 1
323, sec. 16

XIX. *And be it further enacted*, That the chamberlain of the said city shall once in every year at such time as the said mayor, aldermen and commonalty may for that purpose appoint, exhibit to them in common council assembled, a statement of his receipts and expenditures by virtue of such administrations respectively, which statement shall be published in at least two of the public newspapers printed in the said city, for the information of all whom it may concern; and it shall be lawful for the said chamberlain, in the accounts of the said administration, to charge and retain a commission of five per cent upon his receipts, over and above all his reasonable expenses, in and about the said administrations respectively.

Compensation
to him.

Balance in his
hands to whom
payable.
K. and R. v 1
323, sec. 17

XX. *And be it further enacted*, That if any balance of any such intestate's estate shall remain in the hands of the said chamberlain above eighteen months after the committing of administration as aforesaid, the amount thereof shall be published in at least two of the newspapers printed in the said city, for eight weeks successively; and all persons having any claims upon such estate, shall be notified to exhibit the same, with the evidence in support of it, within six months thereafter; and after the expiration of the said six months, the said chamberlain shall pay such balance as may remain unclaimed, to the said mayor, aldermen and commonalty who shall be answerable for the same, but without interest, to such persons as shall thereafter appear to be entitled to the same if any shall appear, and in the mean time all such sums so paid to the said mayor, aldermen and commonalty, shall be by them applied towards the support of the poor in the said city.

And how ap-
plied if not
paid over.

Special just-
ices of N. York
when and how
to take charge
of intestate's
estates.
K. and R. v 1
323, sec. 18

XXI. *And be it further enacted*, That upon the death of any person intestate, not leaving a widow, or next of kin within the said city, it shall and may be lawful for the special justices for preserving the peace in the said city, or either of them, to take such measures as they shall think proper for guarding and securing the property and effects of such intestate from waste or embezzlement until such administration shall be granted as aforesaid, the expenses whereof shall be paid by the said administrator, in preference to any debts whatsoever, and immediately after the funeral charges of the intestate are discharged.

Persons sued
for things
done under
this act may
plead the ge-
neral issue.
K. and R. v 1
323, sec. 19

XXII. *And be it further enacted*, That any person who may be sued for any thing done by virtue of this act, relative to the estate of any person dying intestate within the city and county of New-York, may plead the general issue, and give this act and the special matter in evidence.

The real es-
tate of testa-
tor or intes-
tate how and
when to be
sold for pay-
ment of debts.
K. and R. v 1
323, sec. 20
Sess. 30, c. 145
W. v. 6. 188

XXIII. *And be it further enacted*, That when any executor or administrator whose testator or intestate shall have died seised of any real estate, shall discover or suspect that the personal estate of such testator or intestate is insufficient to pay his or her debts, such executor or administrator shall, as soon as conveniently may be, make a just and true account of the said personal estate and debts as far as he or she can discover the same, and deliver the said account to the judge of the court of probates, or

to the surrogate of the county in which probate of the will or administration on the estate of any such testator or intestate shall have been had, and request his aid in the premises; and the said judge or surrogate shall thereupon make an order directing all persons interested in such estate, to appear before him at a certain day and place in the same order to be specified, not less than six weeks nor more than ten weeks after the day of making such order, to shew cause why so much of the real estate whereof such testator or intestate died seised, should not be sold as will be sufficient to pay his or her debts; which order shall immediately thereafter be published for four weeks successively in two or more of the public newspapers printed in this state, one of which shall be the paper, if any, published in the county where probate of any such will shall be had or administration granted; and the said judge or surrogate shall, at the time and place specified in such order, or at such other time and place as he may then appoint, hear and examine the allegations and proofs of such executors or administrators, and of all such other persons interested in such estate as shall think proper to make or offer any; and if upon due examination, the said judge or surrogate shall find that the personal estate of such testator or intestate is not sufficient to pay his or her debts, the said judge or surrogate shall order and direct the whole, if necessary, or if not, then from time to time so much of the real estate of such testator or intestate then remaining unsold to be sold as will pay his or her debts; and when only a part of the real estate is ordered to be sold, such order shall specify, as particularly as may be, the part so ordered to be sold: *Provided always*, That where any houses and lots are so circumstanced that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, such judge or surrogate, at his discretion may order the whole or greater part thereof than is necessary to pay such debt or debts, to be sold, and to distribute the overplus money arising from such sale among the heirs and devisees, as the case may be.

Personal estate to be sufficient, Judge of probate or surrogate to order notice to be given.

Notice to be published.

When and how order is made to be given.

The whole or part of the real estate to be sold.

Where real estate is so situated as not to permit a sale of part without prejudice.

XXIV. *And be it further enacted*, That all sales of any real estate to be made by order of the judge of the court of probates, or a surrogate, shall be made, and conveyances for the same executed by the executors or administrators applying for such order, and such other discreet person or persons as the said judge or surrogate may think proper to appoint, and the conveyances for the same shall set forth such order at large, and shall be valid and effectual against the heirs and devisees of such testator or intestate, and all claiming by, from or under them.

Conveyances on such sales by whom made and how to operate. R. and R. v. 324, sec. 21.

XXV. *And be it further enacted*, That no lands or tenements shall be sold by virtue of any such order of the judge of the court of probates or a surrogate, unless such sale be at public vendue, and between the hours of nine in the morning and the setting of the sun of the same day, nor unless the time and place of holding such sale shall have been previously advertised publicly for the space of six weeks successively, by putting up a printed or written notice thereof, in at least three of the most public places within the town where such lands and tenements shall be sold, and also by causing a similar notice thereof to be published in

All sales to be at public vendue, and between what hours.

What notice of sale required, and how given.

Repealed Sept 42. p. 215.

To be published.

Penalties on executor, etc.

And for taking down, etc. notice of sale.

Rules may be agreed credit.

Payable

If part of real estate be sold proceeds to be deemed assets. K&L. v 1, 324 § 22

If the whole, then the proceeds to be brought into court

And be divided among the creditors, etc. without preference. Provision.

Notice of distribution to be published, and how.

one of the public newspapers, if any such paper there be within the county wherein such lands and tenements shall be sold, nor unless such lands and tenements shall have been described in the advertisements of sale with common certainty, by setting forth the number of the lot and name of the township in which the same are situate, if any they have, if not, by some other appropriate description; and in case such lands or tenements are situate in any county of this state in which no newspaper is printed, then unless the advertisement of the sale, with the description of the lands as aforesaid, shall have been inserted in the newspaper printed in the city of Albany, in which the laws of this state are required to be printed, and in one of the public newspapers printed in the city of New-York, for six weeks preceding such sale; and if any executor or administrator, or other person, appointed as aforesaid by order of the judge of the court of probates, or a surrogate, to make sale of the lands or tenements of any testator or intestate, shall sell the same, or any part thereof, contrary to the provisions of this act; or if any person shall take down or deface any such notice previous to the day of sale therein specified, unless with the consent of the persons giving such notice, the executor or administrator, or other person, appointed by such order, shall, for every such offence, forfeit and pay the sum of one thousand two hundred and fifty dollars; and every person offending, by taking down or defacing such notice, shall forfeit and pay the sum of thirty-seven dollars and fifty cents, to be respectively recovered, with costs of suit, by any person who will sue for the same, which sum or sums, when recovered, shall be for the use of the person so prosecuting for the same: *Provided*, That no such offence shall be deemed to affect the validity of any such sale: On which sale it shall be lawful to give such length of credit, not exceeding three years, and to sell on such terms as to such executor or administrator, or executors or administrators, shall seem best calculated to promote the interest of the testator or intestate's estate, and the payment of his debts: *Provided*, That this section shall not take effect until one year after the passing of this act.

XXVI. *And be it further enacted*, That where only a part of the real estate is ordered to be sold as aforesaid, the monies arising therefrom shall be received by the executors or administrators applying for such order, and shall be considered as assets in their hands for the payment of debts; but where the whole real estate is ordered to be sold, the monies arising therefrom shall be brought into the said court of probates, or office of such surrogate; and if the same, after deducting all charges and expenses, shall not be sufficient to pay all the debts of the testator or intestate, the said judge or surrogate shall cause the same, after deducting all charges and expenses, to be divided among the creditors in proportion to their respective debts, except as is herein before otherwise directed, without giving any preference to bonds or other specialties: *Provided always*, That before such judge or surrogate shall make any such distribution, he shall cause at least three months notice of the time and place of making the same to be given, by advertising the same in two or

more of the public newspapers printed in this state, for six weeks successively, one of which said papers shall be the paper, if any, printed in the county where such judge of probates or surrogate shall reside: *And provided also*, That no part of the real estate of any testator or intestate shall be ordered to be sold as aforesaid, unless the executors or administrators shall have duly made and filed an inventory of the goods, chattels and credits, of such testator or intestate, before the application for such sale, nor until the executors or administrators shall have applied the personal estate, or such part thereof as may have come to their hands, towards payment of the debts of such testator or intestate; and no more of the real estate shall be sold, in any case, than may be necessary to pay the residue of the said debts: *And provided also*, That nothing herein contained shall be construed to prevent or bar any person from bringing or maintaining any suit or action against any executor or administrator, for or in respect of the personal estate of his or her testator or intestate, or for or in respect of any waste or misapplication thereof, by such executor or administrator.

Further provision.
No sale to be ordered till inventory be filed.

Nor till personal estate be exhausted.

Further provision.
Executors, etc. still liable to suits for waste, etc.

XXVII. *And be it further enacted*, That all monies which may be directed to be deposited in the court of probates, or which may arise from sales by order of the said court, and which may be ordered to be brought into court, shall be paid into the banks of New-York or Albany, subject to be drawn out by the order of the said court, and not otherwise, and that no fee or commission shall be allowed to any officer of said court, on money which may be so paid, deposited or withdrawn.

Monies arising from sales where to be deposited.
H&R. v. l. 443 § 12

XXVIII. *And be it further enacted*, That in every case in which any infant or infants shall be interested in any real estate, which the judge of the court of probates, or the surrogate of any county in this state has authority by this act to order to be sold for the payment of the debts due from the testator or intestate, the said judge or surrogate may, if in his opinion it will be advantageous to the owners of such real estate, authorise the executor or executors, administrator or administrators, of any testator or intestate, to mortgage or lease the said real estate, for the purpose of raising such sum or sums as the said judge or surrogate shall deem necessary and sufficient to pay such debt or debts; and any mortgage or lease, to be executed in pursuance of this act, shall be valid to all intents and purposes: *Provided*, That no such lease shall be for a longer time than until the youngest person interested in such real estate, shall become twenty-one years of age.

If infants are interested in real estates, such estates may be leased or mortgaged to pay debts, and h. v. W. v. 6, 10 Secs. 33, c. 36. § 1

Proviso.

XXIX. *And be it further enacted*, That before any executor or executors, administrator or administrators, shall execute any mortgage or lease, in pursuance of this act, he or they, with two or more competent sureties, shall execute a bond to the people of this state, in a penalty double the amount of the sum to be raised on such mortgage or lease, conditioned that such executor or executors, administrator or administrators, as the case may be, shall faithfully apply the said monies, to be raised on such mortgage or lease, to the payment of the debts due from the testator or intestate, which bond shall be filed in the office of the said judge or surrogate making such order, and in case any such bond shall

But before lease or mortgage given, executors, etc. to give bond with surety.
W. v. 6, 10 Secs. 33, c. 36 § 2 Condition.

If forfeited
how paid.

become forfeited, it shall be lawful for the said judge or surrogate to cause the same to be prosecuted in any court of record, at the request of any party grieved by such forfeiture; and the monies recovered on such bond shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the said judge or surrogate shall, by his decree or sentence, direct.

Guardians for
infants may
be appointed
by surrogate
Sec. 24, c 110
§ 1
W. v. S. 188

XXX. *And be it further enacted*, That it shall and may be lawful for the surrogates of the respective counties of this state, to allow of guardians, who shall be chosen by infants of the age of fourteen years, and to appoint guardians for such as shall be within that age, in as full and ample manner as the chancellor of this state may or can appoint, or allow of the same; and upon such allowance or appointment, such surrogate shall require from every such guardian so allowed or appointed, a bond, executed to such infant, in such penalty as such surrogate shall direct, not less than the value of the personal estate, and the value of the rents and profits of the real estate of such infant, during his or her minority, with sufficient surety, conditioned that such guardian shall faithfully, in all things, discharge the duty of a guardian to such infant according to the laws of this state, and render a true and just account of such guardianship, before any court having cognizance thereof, when thereunto required: *Provided always*, That in case any person interested in the appointment or allowance of a guardian, as next of kin or otherwise, shall conceive himself aggrieved thereby, it shall be lawful for any such person, within six months thereafter, to apply, by petition to the chancellor of this state, for relief in the premises, who shall take such order for notifying the adverse party, and for correcting any such proceedings as aforesaid, as he may deem equitable and just.

And to give
bonds.

Proviso.
Appeal given
to the chan-
cellor.

XXXI. *And be it further enacted*, That in all cases where a petition shall be presented by any executors or administrators, for the sale of the whole, or part, of the real estate of their testator or intestate, and one or more of the devisees or heirs of such testator or intestate shall be infants, the judge of the court of probates, or the surrogate, to whom the same may be presented, shall appoint some discreet and substantial freeholder, a guardian of such infant or infants, for the sole purpose of appearing for, and taking care of, the interest of such infants, in the proceedings therein.

Guardians on
sales under
this act, how
and by whom
to be appoint-
ed.
K&R. v 1, 328
§ 23

Appeals from
surrogates.
K&R. v 1, 328
§ 24

Proviso.

XXXII. *And be it further enacted*, That any person claiming to be aggrieved by any sentence, decree or order of any surrogate, made in pursuance of this act, may appeal from the same to the judge of the court of probates: *Provided*, Such appeal be entered within fifteen days next after the sentence, decree or order appealed from, be made.

[*Note*.—The probate of last wills and testaments, and granting of administration of intestates' estates, was declared by an act of the General Assembly of the Colony, of the 11th Nov. 1692, to be vested in the Governor, "or in such persons as he should delegate under the seal of the prerogative Court." Br. ed. 16. V.S. v. 1. 14.—This right continued down to the revolution, and on the 16th March, 1778, an act of the Legislature declared the powers of the Judge of Probates nearly in the language adopted in the first section of the present revised act—*vide* Gr. v. 1. 18. § 3.—Surrogates were first recognized under the state government March 16, 1778—*vide* Gr. v. 1. 18. § 3. Before that time the Governor of the Colony delegated persons in the different counties with similar powers.]

CHAP. CXXIX.

An ACT relative to the Court of Probates and the Office of Surrogate.

Passed April 5, 1813.

[S. sess. 36. 205.]

BE is enacted by the People of the State of New-York, represented in Senate and Assembly, That in case of the death, resignation, or removal from office of any judge of probate or surrogate, it shall be lawful for his successor in office to complete the unfinished business pending before such judge of probate or surrogate at the time of his death, resignation or removal.

CHAP. LXI.—(R.L.)

An ACT to perpetuate the Testimony of Witnesses in certain cases.

Passed April 5, 1813.

[W. v. 5. 147.]

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That whenever any person shall make and subscribe an affidavit, before one of the justices of the supreme court, or before one of the judges of the court of common pleas, being a counsellor at law in the supreme court, or before a master in chancery, that such person is a party in a suit then pending, or expects to be made a party in a suit affecting the title of land, which he has good reason to believe will be commenced, and that the testimony of any witness or witnesses, to be named with his or their addition, is material and necessary in the defence or prosecution of such suit, the judge or master before whom such affidavit shall be made, shall thereupon direct reasonable notice, not less than fourteen days, to be given to the person or persons named in such affidavit as parties, or expected to become parties, or to his or their attorney, that on the day and at the place in the said notice to be expressed, such witness or witnesses will be examined *de bene esse*, before the said judge or master.

II. *And be it further enacted,* That after satisfactory proof that such notice has been given, such judge or master shall proceed on the day appointed in such order, or on such other day as he shall then appoint to take the deposition of such witness or witnesses, and shall include in such deposition any answer or declaration of such witness or witnesses, which shall be required to be so included by either of the said parties; which deposition after being carefully read to and subscribed by such witness, the judge or master shall certify to have been taken in pursuance of this act.

III. *And be it further enacted,* That every deposition so taken and certified shall, within thirty days thereafter, be filed in

Testimony of witnesses in questions concerning land, how taken W. v. 5. 147. Secs. 39. c. 130, § 1. Party to make oath that he is or expects to be a party in a suit concerning land, and that certain witnesses are material 3 Bl. Com. 469 Judge or master in chancery to direct at least 14 days notice to the adverse party of the time and place of taking the testimony, *de bene esse*.

Proof of service of notice being made W. v. 5. 147. Secs. 30. c. 130 § 3. Witnesses to be examined and depositions taken, read to, and subscribed by the witnesses.

Depositions within 30 days to be filed.

W. v s. 147
 Secs. 30, c 130
 § 3
 and may be
 read in evi-
 dence if wit-
 nesses are too
 old, infirm,
 &c. to attend
 court, either
 as between
 the parties or
 those claiming
 under them

Proviso
 Questions as
 to competency
 may be made

If witnesses
 reside out of
 the state they
 may be exam-
 ined on com-
 mission, on
 notice and af-
 fidavit, &c. as
 before requir-
 ed

And the judge
 may order one
 of the clerks
 of the su-
 preme court
 to issue such
 commission
 Witnesses to
 be examined
 on interroga-
 tories, and
 their names
 inserted in the
 commission

Interrogato-
 ries to be ap-
 proved of by
 the judge

And their ex-
 aminations re-
 duced to writ-
 ing and sign-
 ed, and all ex-
 hibits to be
 proved and
 annexed

the office of the clerk of the county in which the lands in ques-
 tion are situate, and upon due proof of the death, insanity or lu-
 nacy of any such witness, or of his or her inability, by reason of
 age or settled infirmity, to attend court, then a copy of such de-
 position, certified by the clerk in whose office the same shall
 have been filed, shall be read and admitted by every court in
 this state, in any cause between the parties named in the affidavit
 required by the first section of this act, or in any cause between
 persons claiming under either of the said parties, and shall have
 the like effect as if the witness, whose deposition shall be then
 used, had been personally present and gave oral testimony in any
 such cause: *Provided always*, That any objection to the compe-
 tency of any witness who shall be examined by virtue of this
 act, or to the testimony by him or her given, may be made to
 the court before whom his or her deposition is offered in evidence,
 and such court shall decide thereon agreeably to law.

IV. *And be it further enacted*, That whenever any person
 shall make and subscribe an affidavit before one of the said jus-
 tices or judges, therein stating, that such person expects to be
 made a party in such suit as aforesaid, and that he has reason to
 believe the same will be commenced, and that the testimony of
 any witness or witnesses not residing in the state will be mate-
 rial and necessary in the defence of any such suit, then the said
 judge may direct that notice be given as aforesaid, that on the
 day and at the place in the said notice to be expressed, applica-
 tion will be made to such judge for an order that a commission
 be issued by one of the clerks of the supreme court, for the exa-
 mination of any such witness or witnesses; and if it shall appear,
 by satisfactory proof, that the said notice hath been served in
 manner aforesaid, then the said judge, on the day appointed by
 such order, or on such other day as he shall then appoint, may
 order such commission to be issued by one of the clerks of the
 supreme court, under the seal of the said court, directed to such
 persons as the said judge may think fit, authorising them, or any
 two or more of them, to examine such witness on oath upon the
 interrogatories annexed to such commission, and to reduce such
 examinations into writing, and to return the same, annexed to
 the said commission unto the said supreme court with all conve-
 nient speed, and the name of every witness, to be examined by
 virtue of any such commission, shall be inserted in the same com-
 mission, and the interrogatories for the examination of every
 such witness shall be drawn and signed by the said parties or
 their counsel, or such of them as shall request such commission,
 and be approved of by the judge making such order, and shall be
 annexed to such commission; and each party shall be at liberty,
 with the approbation of such judge, to insert in such interroga-
 tories all such questions as he may deem proper; and the said
 commissioners, or any two or more of them, shall and may exa-
 mine the witnesses named therein, or such of them as they can
 meet with, on oath, and cause the examination of each witness
 to be reduced to writing, and signed by the same witness, and
 such commissioner shall then also sign the same; and all such
 examinations, and all exhibits produced to such commissioners,

and proved by any such witness, shall be annexed to the said commission, and returned to the court out of which such commission issued, closed up and under the seals of two or more of the said commissioners; and if it is not convenient for either of the said commissioners to carry the same to one of the judges, then one of the said commissioners shall deliver the same to the agent of the party on whose behalf such witnesses shall be examined; and such agent, or in case of his death the person in whose hands the same shall come, shall deliver the same to one of the said judges, and make oath or affidavit before the same judge that he received the same from the hands of one of the commissioners: or if such agent be dead, then such affidavit shall set forth in what manner the same came into the hands of the person who shall so deliver the same, and that the same has not been opened or altered since he so received it; and such judge shall then open the same, and endorse upon the commission, as the case may be, either received by the hands of one of the commissioners, or upon the oath of the person who delivers the same, as appears by his affidavit, and subscribe his name to the same endorsement, and shall then deposit the said commission and return, with the said affidavit, in the office of one of the clerks of the said court, there to remain as a record; and every such deposition being so taken and returned shall be allowed and read, and shall be deemed good and competent evidence in any such cause, between the parties named in the affidavit or those claiming under either of them which shall thereafter be commenced or prosecuted: *Provided always*, That the party offering such proof shall produce satisfactory evidence to the court before whom any such cause is depending, that by reason of the death, insanity, or lunacy, of any such witness, his or her testimony could not be obtained in case a commission had been issued for the purpose after issue joined in any such suit: *And further*, all parties concerned shall be entitled to take copies of such depositions at their own costs and charges as soon as the same shall be deposited in the clerk's office as aforesaid.

V. *And be it further enacted*, That if any such witness residing within this state, after the tender to him of the fees allowed by law, and after being required to appear before a judge or master for the purpose of taking his or her deposition as aforesaid, shall refuse to appear and testify, such judge or master upon due proof of such refusal, shall issue his warrant, directed to the sheriff or any constable of the county, where such witness is to be found, to compel the appearance of any person so refusing; and if upon his or her appearance, such person shall refuse to give testimony of any fact within his or her knowledge, touching the matters in question, or after such testimony has been reduced to writing, shall refuse to subscribe the same, the said judge or master is hereby authorised and empowered to commit such person so refusing to the common gaol of the city or county, by warrant under his hand and seal, specifying the cause of such commitment, there to remain without bail or mainprize, until he or she shall comply with the requisitions of this act.

Commission how and to whom to be returned

To whom and how to be delivered, And oath thereof required,

And that it is unaltered and not opened and the judge to endorse and open the same.

And deposit the same in the clerk's office of the supreme court And shall then be evidence between the parties or those claiming under them.

All parties entitled to take copies of depositions.

Witnesses within the state bound to attend on tender of fees, etc. W. v. S. 147 Sec. 30 ch. 130 § 4

Or the judge or master may by warrant compel them to appear. And if they refuse to testify after appearance or subscribe deposition, etc. May be committed to gaol without bail or mainprize until they comply, etc.

This act not to extend to infants, etc. being defendants
W. v. 5. 147
Sess. 30, ch. 130
§ 8

VI. *And be it further enacted*, That this act shall not be construed to extend to suits, wherein infants within the age of twenty-one years, or persons insane, or imprisoned, shall be defendants.

CHAP. XIV.—(R.L.)

An ACT concerning the Council of Revision, the Council of Appointment, and the Great and Privy Seal of this State.

Passed February 25, 1813.

Council of revision, its powers, etc. as to the passage of laws.
K. & R. v. 1. 202
W. v. 3. 333
Sess. 26. ch. 44

[The governor and his council under the colonial government had a negative upon all laws passed by the general assembly.]

38 H. S. c. 17.
1 Bl. Com. 273
24 Geo. 3. c. 24.
If bills not returned in 10 days to be a law.

The governor to endorse the same on the bills.

And deliver the bill to the secretary of state personally.

Proceedings when bill is objected to by the Council.

[Constitution of the state, art. III.—J. & V. v. 1. 22, 23.—Gr. v. 1. 17, 18, 19.—K. & R. v. 1. 202.—W. v. 3. 333.—Sess. 32. ch. 141.]

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That whenever a bill shall have been received by the Council appointed to revise all bills about to be passed into laws by the legislature, (and which Council shall continue to be known by the name of the Council of Revision) and the said Council shall have thereon declared that it does not appear to them improper that the said bill should become a law of this state, or if the said bill shall have been before the said Council for the space of ten days, and shall not have been returned by the said Council, with their objections thereto, as by the constitution of this state is required, whereby the same shall become a law of this state, a certificate thereof, as the case may be, to be subscribed by the person administering the government of this state, shall be endorsed on such law; whereupon, the said person administering the government shall, with his own proper hand, deliver such law to the secretary of the state, or his sworn deputy, who shall cause the same to be deposited in the secretary's office; and that whenever, and as often as a bill returned by the said Council of Revision, to be re-considered, shall, notwithstanding, be passed into a law, the president of the senate or the speaker of the assembly, in whichever the same shall, upon such re-consideration last pass, shall deliver such law with his own proper hand to the secretary of the state, or his sworn deputy, to be deposited as aforesaid; and the secretary of the state, or his sworn deputy, shall attend at every session of the legislature, for the purpose of receiving laws, to be delivered to him as aforesaid.

II. *And be it further enacted*, That the secretary shall cause the original laws to be bound together in volumes of such size as he shall think proper; and shall also, from time to time, deposit in his office, one copy of the laws, printed by the printer to the state, having first examined and compared the same with the original laws on file, and noted at the end of each act, any error or mistake that may be found in the printed copy: *And further*, On the back of each volume of the engrossed or original laws, the secretary shall cause to be written, or printed, in large characters, the words following, to wit: Original laws, passed the (insert the

The original laws to be bound in volumes.

W. v. 3. 333
Sess. 26. c. 44.
A printed copy to be kept in the secretary's office.

(number of) session, in the year ; and on the back of the printed copy aforesaid, these words, to wit: Copy of the printed laws, passed the (taking in number of) session, in the year, (insert the time of) compared and certified by the secretary.

III. *And be it further enacted*, That the secretary of this state shall *ex-officio* be clerk of the Council of Appointment, and shall exercise the said office in person, or by his sworn deputy ; that on all nominations, and appointment to offices, within this state, by the Council of Appointment, the order or orders of the said Council thereupon shall be fairly written and entered in the minutes of the proceedings of the said Council, which are hereby declared to be public records of this state, and shall be subscribed by such majority of the said Council as shall agree to each respective order ; whereupon, the clerk of the said Council shall forthwith cause commissions to be made out, agreeable to such orders, and delivered to the person administering the government of this state, in order that the same may be sealed.

IV. *And be it further enacted*, That as often as any appointment shall be made by the Council of Appointment to any office, civil or military, in this state, and as often as any person shall be superseded, the commission and supersedeas shall, from time to time, be speedily sent by the secretary of this state to the clerk of the county wherein such person so appointed or superseded shall reside ; which clerk shall forthwith, at the expence of this state, give notice to every person, appointed to any office, or superseded, of such appointment or supersedeas ; and whenever the person administering the government of this state shall judge it for the public good, that a speedier communication be made of any appointment or supersedeas, it shall be lawful to dispatch, at the expence of this state, an express for that purpose to the person so appointed or superseded, or to the clerk of the county wherein such person shall reside, with the commission or supersedeas.

V. *And be it further enacted*, That in those cases where a supersedeas issued, and sent in manner aforesaid, will not in the opinion of the person administering the government of this state, give sufficient public notice thereof, the secretary of this state shall cause notice of such supersedeas to be published for two weeks successively in the newspaper printed by the printer to this state, which publication is hereby declared to be a sufficient notice thereof, to all intents and purposes.

VI. *And be it further enacted*, That the descriptions in writing of the arms, and of the great and privy seal of this state, and of the seal of office of the secretary of this state, deposited and recorded in the office of the secretary of this state, shall remain as public records ; and the arms and great and privy seal aforesaid, and the seal of office of the secretary, of which descriptions in writing have been deposited and recorded as aforesaid, shall be, and continue the arms, the great seal, and the privy seal, and the seal of office of the secretary of this state ; and the person administering the government of this state, shall have the custody of the great and privy seal, and that the said privy seal shall be the seal for military commissions ; and that all such matters and things as have heretofore since the sixteenth day of March, one

Volumes of original laws and the printed copy how to be endorsed etc.

Council of Appointment, its clerk. K. & R. v. 1. 302. § 2. His duties. Proceedings of Council declared public records.

To be subscribed by a majority. Commissions when and how made out and delivered.

Commissions and supersedeas how transmitted. K. & R. v. 1. 306 § 3

Express, may be employed to deliver supersedeas in special cases.

Or it may be published in the paper printed by the state printer. K. & R. v. 1. 303 § 4.

That the great and privy seal of the state shall remain as public records. K. & R. v. 1. 303 § 5. Secs. 32. ch. 141 § 1, 2. Ann. c. 7 § 2. 11. Com. 3. 30

The seals by whom kept, and how applied.

thousand seven hundred and seventy-eight, issued under the great seal of this state except copies of records and papers in the office of the said secretary, certified by him or his deputy and authenticated under the said seal of office, shall continue to be issued under the great seal and shall be made out and entered of record in the office of the secretary of this state.

CHAP. XCVIII. (R.L.)

*An ACT for giving Relief in Cases of Insolvency.**

Passed April 12, 1813.

[S.&L. v. 2. 62, 216—V. S. v. 1. 348, 392.—J.&V. v. 1. 131.—Ibid. v. 2. 375, 392.—Gr. v. 2. 204, 220.—K.&R. v. 1. 428.—W. v. 5. 117, 344, 408, 519.—Sess. 33. ch. 144, 193.—Sess. 34. ch. 248.]

Insolv't debtors in conjunction with two thirds of their creditors in value, may present a petition to the chancellor etc
J.&V. v. 2. 375
Gr. v. 2. 204
K.&R. v. 1. 428
§ 1
W. v. 5, 344
Sess. 31. c. 163
§ 1
[Vide the English bankrupt laws which have some similar features, etc.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That it shall be lawful for any debtor who now is or hereafter shall become insolvent, in conjunction with so many of his creditors, residing within the United States, or the attorney of any creditor in cases where the principal of such attorney resides without this state, and within the United States, who have or shall have debts *bona fide* owing to them by such insolvent, amounting at least to two thirds of all the money owing by such insolvent, whether the same be then due, or to become due and payable thereafter, in order to obtain a general discharge, to present a petition to the chancellor of this state, or to any one of the justices of the supreme court, or to the first judge of any court of common pleas, in any county in this state, or to any one of the judges of any court of common pleas, praying that such insolvent's estate may be assigned and such insolvent discharged according to this act : *Provided*, That no person shall become a petitioning creditor who may have purchased or procured to be assigned to him, any debt due or to become due

Proviso

* *The first general act for the relief of Insolvent Debtors, was passed the 5th July, 1755—vide S.&L. v. 2. 62.—V. S. v. 1. 348; amended 19th May, 1761, requiring 3-4ths of creditors to petition, &c.—vide S.&L. v. 2. 216.—V. S. v. 1. 392.—This system continued in force by different subsequent acts till the 1st January, 1770, when it expired by its own limitation—vide V. S. v. 1. 392. Occasional private acts were afterwards passed from time to time for the relief of certain individuals, but no general system was adopted after the 1st January, 1770, until the 17th April, 1784, when the legislature passed a general law for the relief of insolvent debtors, &c.—vide J.&V. v. 1. 131; and that system having been amended at different times, the legislature at length passed the act (which is sometimes called the *three-fourth act*) of the 21st March, 1788.—vide J.&V. v. 2. 375.—Gr. v. 2. 204, and which was revised 3d April, 1801—vide K.&R. v. 1. 428. From the 21st March, 1788, to the 3d April, 1811, insolvents were relieved on the petition of *three-fourths* of their creditors, &c. and then an act passed, authorising a *similar relief* on the petition of the *debtor only*, without requiring the concurrence or assent of any of the creditors, and all former insolvent acts were repealed, &c.—vide Sess. 34, c. 123, and c. 248. § 3.—S. pages 295, 468 : But the act of April 3d, 1811, was itself repealed, and the 3-4th act of 1801, revived, by an act passed on the 14th February, 1812.—vide Sess. 35, ch. 8, & ch. 41.—S. pages 7, 62. The 3-4th act continued till the 12th April, 1813, when the present system requiring 2-3ds only of the creditors (instead of 3-4ths) to petition, &c. was adopted by the legislature.*

Insolvent Debtors - ...

Act. of 1811. - G. W. 200 - Sept. 32. Ch. 123 - 3 Apr. 1811. -

Amendment - G. W. 336 Jan. 3. Sept. 32. Ch. 248 Jan. 3 -

Repeated - - G. W. 349 - Sept. 35. Ch. 8 - 11 Feb. 1812
- G. W. 378 - 41. -

Mem. the Amending Act of G. W. 336 reverts the Div.
= ginal ~~title~~ wrong - 1807. for 1811 -

by such insolvent, except for so much only as was actually and bona fide given for the debt so purchased or procured.

II. *And be it further enacted*, That any person having any mortgage, judgment, assignment or other real security of, or upon any lands, tenements, hereditaments, goods or chattels, or thing in action whatsoever, either to such person, or to any other in trust for such person, for securing the payment of any sum of money from such insolvent, shall not for such sum become a petitioner in favor of such insolvent, unless such person shall upon signing the petition aforesaid, add to his name subscribed to the same petition a declaration in writing, that he doth thereby relinquish and give up to the assignee or assignees to be appointed by virtue of this act, such mortgage, judgment, assignment or other security for the benefit of all the creditors of such insolvent: and every such mortgage, judgment, assignment and security so relinquished, and the lands, tenements, hereditaments, goods and chattels and things in action so mortgaged, assigned or affected by such judgment or security, shall, with the residue of such insolvent's estate vest in the assignee or assignees of such insolvent's estate, for the purpose aforesaid.

Petitioning creditors to relinquish certain securities they may have. s. c. K & R. v. J. 429 § 2

Which shall thereupon vest in the assignee, etc

III. *And be it further enacted*, That to every petition to be presented to the said chancellor, justice or judge, shall be annexed an affidavit of each petitioning creditor, made before a master in chancery, or one of the justices of the supreme court, or one of the judges of the court of common pleas of any county in this state, that the sum annexed to the name of such petitioning creditor is justly due to him, or will become due to him at some future time to be specified in such affidavit, and that he, or any other person to his use hath not received from such insolvent or any other person, any payment of part of his demand against such insolvent in money, or by sale, conveyance, assignment or delivery of any lands, tenements, hereditaments, goods, chattels, or any thing in action, or any gift or reward whatsoever, upon any express or secret or implied contract, promise, trust or confidence that he should become a petitioner for and in behalf of such insolvent; and every such petitioning creditor shall in his or her affidavit of the debt due to him or her from such insolvent, specify the nature of his or her demand, whether arising on obligation, note, account or otherwise, with the general ground of such indebtedness.

The affidavit required of each petitioning creditor K. & R. v. L. 429 § 3 W. v. S. 349 Sec 31. c. 163 sec 4

IV. *And be it further enacted*, That no debt due by such insolvent to any person who shall petition in favor of such insolvent by attorney, shall be taken and deemed to make any part of the two thirds in value of the debts due by such insolvent, unless such petitioning attorney shall deliver unto the chancellor, or to the justice of the supreme court, or first judge of the court of common pleas in any county to whom such petition shall be made, or to the court of common pleas of which the judge to whom such petition shall be made, was a member, the original accounts or authenticated copies thereof, and the original specialties, if any, on which the debt to his principal has arisen, with an affidavit of such principal annexed in the form of the oath herein before prescribed to be taken by every petitioning credit-

Proceedings where any creditor petition by a form K. & R. v. R. 429 § 4

or of such insolvent, which affidavit shall be made before a judge or justice of one of the superior or supreme courts, or a notary public of the state or kingdom wherein such creditor shall reside, and be certified under the hand and seal of such judge, justice or notary public.

Debtor to deliver an account of his creditors and an inventory of his estate
K and R. v 1
429. sec 8

And to take an oath

Oath

Advertisements and notices required for creditors to shew cause
[W. v 4. 10
not adapted]

If no sufficient cause be shewn assignment to be ordered and nature of such assignment, &c the extent thereof

V. *And be it further enacted*, That every such insolvent shall deliver or cause to be delivered to the chancellor, or justice of the supreme court, or judge of the court of common pleas, at the time of presenting such petition, a full, just and true account of all his creditors, and the monies owing to them respectively by such insolvent; and also a full, true and just inventory of all the estate both real and personal, in law and equity, of such insolvent, and of all the books, vouchers and securities relating to the same; and the said chancellor, justice or judge of the court of common pleas shall administer to such insolvent, an oath to the following effect: "I do swear that the account of my creditors and the inventory of my estate which are both herewith delivered, are in all respects just and true, and that I have not at any time or in any manner whatsoever disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors, and that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owed, or with intent to aid my discharge under the "act for giving relief in cases of insolvency." Which oath being taken by such insolvent, he and the petitioning creditors, or one of them, shall cause an advertisement to be published for six weeks successively in the newspaper printed by the printer of this state, and such other newspapers as the chancellor, justice or judge of the court of common pleas to whom such application shall be made may direct, and shall also cause a copy of such advertisement to be put up six Mondays successively on the outward door of the court-house or gaol of the city or county in which such insolvent shall reside or be imprisoned, and by which advertisement all the creditors of such insolvent shall be required to shew cause, if any they have, by such a day as shall be appointed by the chancellor or justice or first judge of any county, or if such affidavit is made before a judge of the court of common pleas, then at the term of such court to be held next after the expiration of the said six weeks, specifying the time and place when and where such term shall be held, why an assignment of the said insolvent's estate should not be made, and the said insolvent discharged according to this act; at which day or term so appointed, or on any other subsequent day or term that the chancellor, justice, first judge or court of common pleas may judge proper to appoint, and if no sufficient cause is the contrary appears, and the chancellor, justice of the supreme court, first judge of the said court of common pleas shall be satisfied that the said insolvent is justly and truly indebted to the subscribing petitioners in the sums by them respectively mentioned, and that such sums amount in the aggregate to two-thirds of the debts due by such insolvent, to creditors residing within the United States, and that such insolvent has conformed in all things to the matters required of him by this act, the said chancellor, justice of the

preme court, first judge, or the said court of common pleas shall direct a grant or assignment of all such insolvent's estate, both in law and equity, in possession, reversion or remainder to be made by such insolvent to the person or persons nominated by the petitioners, or a majority of them, in respect to the amount of their said demands, on the said insolvent, except such articles of wearing apparel and bedding as in the opinion of the chancellor, justice of the supreme court, first judge, or court of common pleas aforesaid, shall be reasonable and necessary for such insolvent and for the family of such insolvent to retain, and also the arms and accoutrements of such insolvent, if any there are mentioned in such inventory, required by law to be provided by any citizen enrolled in the militia.

VI. *And be it further enacted,* That every person applying for the benefit of this act, shall make application in the county of which he or she may be an inhabitant, or within which he or she may be imprisoned, and not elsewhere, of which proof shall be made to the chancellor, justice, judge or officer authorised to execute this act, before any order for notifying the creditors of any such applications shall be granted; and that every debtor applying for the benefit of this act, shall set forth in the account or schedule of his creditors, the place of residence of each creditor, if such residence can be by him ascertained; and in case such place of residence shall be one hundred miles distant from the court or officer to whom such application is to be made, the notice to creditors shall be published for at least ten weeks, in the manner hereinbefore directed; and the public newspaper, if any, printed in the county in which application is to be made, shall always be one, in which such notice shall be inserted as aforesaid.

Debtors to apply in county in which they reside or are imprisoned.
IV. v. 5, 344
Secs. 31. c 16.
sec. 2, 3

And debtor shall set forth the residence of his creditors.

Notice regulated accordingly.

VII. *And be it further enacted,* That it shall and may be lawful for the chancellor, justice, first judge or court of common pleas, before whom such petition shall be depending, upon application by any creditor of such insolvent, to examine such insolvent, his wife, the petitioning creditors, and any other person and persons upon oath, touching every matter relative to the estate, debts and credits of the said insolvent, and for that purpose to issue a warrant under the hand and seal of such chancellor, justice, or of a judge of the said court of common pleas, requiring any person to appear and answer before the said chancellor, justice, first judge or court of common pleas, touching the matters directed by this act to be heard by them; and every person who being served with such warrant shall, without reasonable cause, refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matters aforesaid, shall forfeit the sum of one hundred and twenty-five dollars, to be recovered with costs of suit, by action of debt, by any person who will sue for the same, and shall also be committed to prison by warrant or order of the said chancellor, justice, first judge or court, there to remain without bail, until he shall submit to answer upon oath as aforesaid.

Insolvent, his wife, and any other person may be compelled to attend and be examined as witnesses. cct. K. and R. v 1 431, sec. 6

Penalty for not attending, etc.

VIII. *And be it further enacted,* That upon such insolvent producing a certificate under the hand and seal, or the hands and

Discharge how and when granted.

R&K. v. 1, 431
sec. 7

2 Coates' Rep.

25—1 lb. 4, 144

1 John. ca. 71,

106, 107—2 lb

240, 243—3 lb.

90—1 Jo'm.

Rep. 37, 91, 117,

75—2 lb. 106

3 lb. 742—4 lb

291—5 lb. 135

6 lb. 120—7 lb

24, 76, 117—9

lb. 127, 240,

245, 259, 326,

392

Not to affect

creditors out

of the United

States, unless

they petition,

except a divi-

dend, or un-

less two thirds

of all the credi-

tors peti-

tion, etc.

Effect of dis-
charge as to
imprisoned in-
solvents.

How creditors
may procure
an assignment
of the estate
of a debtor
imprisoned 60
days for a
debt of 25
dollars or up-
wards.

K&R. v. 1.
432, sec. 8

seals of the assignee or assignees, executed in the presence of two witnesses, that such insolvent has granted, conveyed, assigned and delivered, for the use of his creditors, all his estate, real and personal, both in law and equity, in possession, reversion or remainder, except as aforesaid; and all the books, vouchers and securities relating to the same, the chancellor, justice, first judge or court of common pleas, shall discharge such insolvent from all such debts due at the time of the assignment or contracted for before that time, though payable afterwards, except debts due or owing to creditors without the United States, who shall not petition for the insolvent's discharge, or come in and accept a dividend of the insolvent's estate from the assignees, unless two thirds of all the insolvent's debts, including foreign debts, shall have been signed off as before directed, in which last case, foreign as well as domestic debts shall be discharged, and also if in prison, from his imprisonment; which discharge, or the record thereof, shall be a sufficient warrant and authority to the sheriff or gaoler, for setting such prisoner at large, unless confined at the suit of a foreign creditor, who has not petitioned for the insolvent's discharge; and the said discharge or the record thereof, or transcript thereof duly authenticated, shall be also conclusive evidence in all courts within this state, of the facts therein contained.

IX. *And be it further enacted*, That it shall and may be lawful for any creditor of any person who hath or shall have been actually imprisoned for sixty days and upwards upon execution, in any civil action, to apply in person or by attorney, if the principal resides without this state as aforesaid, to the chancellor, or any of the justices of the supreme court, for relief, in case such creditor or the said attorney, shall be apprehensive that the estate or effects of such debtor will be wasted or embezzled; and upon such application, and an affidavit being made by such creditor before a master in chancery, or justice of the supreme court, or in case of the residence of such creditor without this state, then in the manner herein before directed, that such person is justly indebted to such creditor in a certain sum of money then due, and to be specified in the said affidavit, and not less than twenty-five dollars, and that such debtor is in prison on execution issued against him in some civil action, and has been so imprisoned for sixty days and upwards, the said chancellor or justice shall order a publication to be made in the manner herein before directed, for the creditors of such debtor to appear before him at a certain day in the said order to be specified, and not less than eight weeks after the publication of such order, to shew cause, if any they have, why an assignment should not be made of the said debtor's estate, for the benefit of all such creditors; and upon that day, or at such subsequent days and times as the said chancellor or justice may appoint, if so many of the creditors of such insolvent as he shall be satisfied have debts owing to them to the amount of two thirds in value of all the debts owing by such insolvent, shall request an assignment to be made of the estate of such insolvent as aforesaid, and no good cause appears to the contrary, it shall be lawful for the said chancellor or jus-

tice to direct such assignment to be made in like manner as if the parties had appeared before him in consequence of a petition as aforesaid; each of the said creditors first making an affidavit in the manner herein before directed, that the sum demanded by such creditor is justly due to him, or will become due to him at some future time, to be specified in such affidavit, and that he, or any other person to his use, hath not received from such insolvent or any other person, any payment of part of his demand against such insolvent in money, or by sale, conveyance, assignment or delivery of any lands, tenements, hereditaments, goods, chattels or any thing in action, or any gift or reward whatsoever, upon any express or secret or implied contract, promise, trust or confidence, that he should consent to or request such assignment; and if such insolvent shall make such assignment in ten days thereafter, and shall conform to the directions of this act with respect to petitioning debtors, such insolvent shall be thereupon discharged, in like manner as if he had petitioned for his discharge in conjunction with the creditors pursuant to this act; but if such insolvent shall refuse or neglect to make such assignment as aforesaid, the said chancellor or justice shall execute an assignment of such insolvent's estate, both in law and equity, in possession, reversion or remainder, to such person or persons as a majority of the creditors of such insolvent, in respect to the amount of their demands appearing to him shall nominate, and with the like exceptions as are herein before mentioned; which assignment shall be equally valid, and the assignees shall have the like estate and power, and be subject to the like duties as if the same had been executed by such insolvent, and shall vest in such assignees the whole of the estate which belonged to the said insolvent on the day of the first publication of the order so made as aforesaid.

X. *And be it further enacted*, That if the said insolvent shall so as aforesaid refuse or neglect to make an assignment of his estate, such insolvent shall not be discharged from his debts or from imprisonment, by virtue of this act, unless such insolvent shall produce to the said chancellor, justice or other officer, having cognizance of the case, satisfactory evidence that creditors residing within the United States, to whom he is justly indebted to the amount of two thirds of all debts owing by him within the United States, shall concur in a petition or request for his discharge; or unless such insolvent shall have delivered such inventory and account, and taken such oath as is herein before prescribed, and so many of his creditors as aforesaid have accepted a dividend under such assignment.

XI. *And be it further enacted*, That in all cases where executors or administrators shall deem it proper to become petitioning creditors for any insolvent debtor, such executors or administrators may present a petition to the chancellor of this state, stating the reasons which induced them to think it advisable for them respectively to become petitioning creditors as aforesaid, whereupon the said chancellor shall, as soon as he may deem it convenient, examine the allegations and reasons contained in such petition in a summary manner; and if he shall thereupon be of opinion that it will not be disadvantageous to the persons

Such impris-
oned debts
barred the
benefit of this
act unless, et al
K&R. v. 1.
433, sec. 9
W. v. 5. 344
Sess. 31. a. 193

In what man-
ner executors
and adminis-
trators may
become peti-
tioning credi-
tors.
K&R v 1 433
sec. 10

interested in the personal estate of such testator or intestate, that the said executors or administrators should become petitioning creditors as aforesaid, then and in every such case, he shall cause an entry of such opinion to be made in the minutes of the court of chancery, and thereupon the said executors or administrators shall be fully authorised to become petitioning creditors as aforesaid, and shall be only chargeable with such sum of money as shall come to their hands from the estate of the insolvent.

Insolvent discharged may plead general issue.
K.&R. v. 1 434
sec. 11
1 John. ca. 133
2 John Rep.
294

XII. *And be it further enacted*, That any such insolvent having been discharged in conformity to this act, if prosecuted for any debt or contract before mentioned, or if any other person be sued for any matter or thing done by virtue of this act, it shall be lawful for such person to plead the general issue, and give the special matter in evidence.

Insolvent guilty of fraud or perjury, his discharge void
K.&R. v. 1.
434, sec. 18
3 John. ca. 133
1 John. Rep.
299, 300—3 Ib
98—3 Ib. 319

XIII. *And be it further enacted*, That in case any such insolvent shall be guilty of perjury by concealing any part of his estate or effects, or shall, after the assignment of his estate by virtue of this act, receive any debt due to him before such assignment, or if he shall secrete any part of his estate, or any books or writings relative thereto, with intent to defraud his creditors, or shall fraudulently conceal any of his creditors or the amount of the sum due any of them, or shall procure any person to become a petitioning creditor for any sum not *bona fide* due from him to such creditor, or for any larger sum than is really or *bona fide* due from such insolvent to such creditor, to make such sum in value as is required by this act as aforesaid, or shall make or cause, or procure to be made, or shall voluntarily consent to the making of any payment to any petitioning creditor of the said insolvent, or any other person, to his or her use, of any part of the debt or demand of such petitioning creditor against such insolvent, in money or by sale, conveyance, assignment or delivery of any lands, tenements, hereditaments, goods, chattels, or any thing in action, or any gift or reward whatsoever, upon any express or secret or implied contract, promise, trust or confidence, that he should become a petitioner for and in behalf of such insolvent, then and in every such case, the discharge of the said insolvent under this act, shall be void, and his person and estate or effects, shall be subject to the payment of all his former debts, as well to his petitioning creditors as others, the said discharge to the contrary notwithstanding.

Penalty on persons concealing insolvent's estate.
K.&R. v. 1 434
sec. 19

XIV. *And be it further enacted*, That any person who shall have accepted of any trust for any insolvent, or shall wilfully conceal or protect any estate real or personal of any insolvent from the assignee or assignees of such insolvent, and shall not in fifty days after notice of such assignment being published in the newspaper printed by the printer to this state, and one other of the public newspapers printed in this state, fully discover and disclose such trust and estate to the said assignee or assignees, he shall forfeit the sum of two hundred and fifty dollars, and double the value of the estate so concealed, to be recovered with costs by action of debt, in any court of record having cognizance thereof, in the name or names of the said assignee or assignees, for the use and benefit of the creditors of such insolvent.

XV. *And be it further enacted*, That if any person shall swear before a master in chancery, justice or judge as aforesaid, that any sum of money is due to him from any such insolvent, which sum of money is not really due, or shall swear that more is due than is really due, knowing the same to be not due, and that such oath is false, such person shall be liable to pay double the sum so sworn to be due as aforesaid, to be recovered by action of debt in any court having cognizance thereof in the name or names of the assignee or assignees of such insolvent's estate, and to be divided among all the creditors of such insolvent, in proportion to their demands against such insolvent's estate.

Punishment on persons swearing to sums not due, or to more than is due.
K&R v. 1. 430
sec. 10

XVI. *And be it further enacted*, That for the more full discovery of the estate of such insolvent, the chancellor or justice of the supreme court, or first judge, or other judge of the court of common pleas, at the request of the assignees, the survivors or survivor of them, shall have at any time after such assignment as aforesaid, full power, and they are hereby required to summon and examine on oath such insolvent, his wife, and every other person whomsoever, known or suspected to detain any part of the said insolvent's estate, or to be indebted to it; and in case any person on such summons shall refuse to attend, having no reasonable excuse, or shall refuse to be sworn, then it shall be lawful for the said chancellor, or any of the justices of the supreme court, or such first or other judge of the court of common pleas, to commit the person so refusing to gaol, until he shall submit to be examined concerning what he may know relative to such estate; and if any such person shall wilfully and knowingly affirm or swear falsely, the person so offending shall be liable to the same pains and penalties as those who are convicted of wilful and corrupt perjury.

Persons suspected of such concealment, may be examined on oath.
K&R v. 1. 430
sec. 15

And if they refuse, may be committed.

False swearing declared perjury.

XVII. *And be it further enacted*, That every such insolvent who shall, before the delivery of such petition, have become bail in any cause, on account of which he has reason to think judgment may be had against him, and shall make oath that at the time he so became bail he had a clear estate, sufficient to answer any demand that could with any probability be made upon him as bail, may add to the account of the creditors and the monies owing by him before directed to be given, an account of the manner of becoming bail, and annex such a sum as he shall imagine he will be liable to pay on that account; and then the assignees shall reserve in their hands, for the space of one year and a half, such a dividend as a creditor for the like sum would have a right to receive; and after judgment obtained against any such insolvent, the person obtaining the same shall be considered in every respect as another creditor, whose debt was due before the delivery of the petition; but if in the space of one year and an half after the petition is delivered, no judgment shall be obtained against such insolvent, the monies so reserved shall be divided among the other creditors in the same manner as the rest of such insolvent's estate, and such insolvent shall be discharged from all obligations as bail, in the same manner as if the sum so annexed to the account of his creditors was paid; and if judgment shall be obtained against such insolvent as bail, for any sum, within

Insolvents who are bail, may add to their account the sums they deem themselves liable for.
K&R v. 1. 438
sec. 16

Assignees to reserve a dividend for the plaintiff 18 months.

And if insolvent is not then made liable by judgment as bail, monies reserved to be distributed among the creditors.

If insolvent
omit to add
such sum,
plaintiff en-
titled to his di-
vidend.

Provided,

one year and a half after the petition is delivered, and after the division of the produce of his estate among his creditors, and the said insolvent shall have omitted either wholly or in part, to annex the said sum to the account delivered, the person obtaining such judgment shall recover against the said insolvent either for the whole or part omitted, as the case shall happen to be, so much as the other creditors of the said insolvent ought to have received for a like just debt, and no more : *Provided always*, That the sum for which judgment is obtained against such insolvent, being added to the account of his creditors, and of the monies owing to them before directed to be given, the debts owing by him to the petitioning creditors, shall still appear to have been two thirds of all that was owing by the said insolvent to creditors residing within the United States.

Persons whose
debts are not
due entitled to
a dividend on
a rebate of
interest.
K&R. v. L.
436, § 17

XVIII. *And be it further enacted*, That all persons who have given credit to such insolvent on a valuable consideration for any sum of money or other matter, which is or shall not be due or payable at or before the time of the delivery of the petition, shall be admitted as creditors whose debts are then due, and shall receive a dividend of such insolvent's estate in the same proportion as the other creditors, deducting thereout only a rebate of interest at the rate of seven per cent. per annum for what shall be received on such debts, unless such debts shall be payable with interest, to be computed from the actual payment thereof to the time they would have been due.

Power and
duties of the
assignees
K&R. v. L. 436
§ 18

XIX. *And be it further enacted*, That such assignee or assignees shall have power to dispose of all the real and personal estate of such debtor which shall be assigned to him or them, or which ought, by virtue of this act, to be assigned to him or them, and to convert the same into money, to execute good and sufficient deeds for such real and personal estate, to redeem all mortgages and conditional contracts, and satisfy all judgments, and to recover in his or their name or names all such real and personal estate of such insolvent, and all deeds and books of accounts and papers respecting the same, and shall have full power to refer to arbitration, settle or compound with any person indebted to the insolvent in such manner as shall from time to time appear to such assignee or assignees most advantageous to the creditors of such insolvent, and shall, within the space of one year, proceed to make a division of all the money which shall have come to his or their hands of such estate, first giving three months notice of the time and place of making such dividend, by advertising the same in the newspaper printed by the printer to this state, and in one other of the newspapers printed in this state; and if the whole be not then settled shall, within the space of one year thereafter, make a second division of such monies as may come to his or their hands after the first division, and so from year to year, until a final settlement thereof and a just and equal division of the whole be made to creditors whose debts are discharged by this act; and if on settling the estate of the insolvent, a surplus should remain in their possession, after discharging the debts of the said insolvent, the same shall be paid to the said insolvent or his legal representatives.

XX. *And be it further enacted*, That where it shall appear to the assignee or assignees of any insolvent debtor, who hath been or shall be discharged under this act, that there hath been mutual credit given by the said insolvent and any other person, or that mutual debts subsisted between the said insolvent and any other person, before such insolvent presented his petition praying the benefit of this act, the assignee or assignees of such insolvent shall state the account between them, and one debt may be set against another, and what shall appear to be due on the balance of such account, and on setting off such debts against one another, and no more shall be claimed or paid on either side respectively.

In case of mutual dealings assignees to admit of set off
K&R. v 1, 437
§ 19

XXI. *And be it further enacted*, That the assignees, or the survivors or survivor of them, shall, at least one month before a division be made, appoint a day by advertising the same in one or more of the public newspapers for a general meeting of all such creditors as shall choose to attend, to examine and ascertain the debts due to each creditor, and in case of any controversy relating to such debts, it shall be determined in the following manner, that is to say: The assignee shall nominate two referees, not being creditors of the insolvent, and the creditor whose debt is in controversy shall nominate two others, and their names shall be separately written on four pieces of paper, as nearly of the same size as possible, which shall be rolled up in the same manner and put into a box, and from thence one of the assignees shall draw out three of the said pieces of paper, and the persons whose names are so drawn, shall finally settle such controversy; and if any referee so appointed shall refuse, or be incapable of acting in a reasonable time, a new choice shall be made in the same manner; and in case any such creditor shall refuse to nominate referees on his part, the assignees are hereby empowered to nominate them for him.

Assignees to notify creditors before a dividend
K&R. v 1, 437
§ 20

How controversies relating to debts due to creditors to be settled

XXII. *And be it further enacted*, That the assignee or assignees shall before he or they enter upon the execution of the trust committed to him or them by virtue of this act, take an oath, to be administered by a master in chancery, a justice of the supreme court, or any of the judges of the court of common pleas aforesaid, well and faithfully to manage the insolvent's estate, and keep and render a true account of all that shall come to his or their hands of the same; and for that purpose he or they shall keep regular books of account, to which every creditor at all reasonable times may have recourse, and for the care and trouble incumbent on the assignee or assignees, he or they shall be allowed out of the insolvent's estate, such a compensation as the petitioners, or a major part of them, shall agree and fix upon; and that all costs of suit, prison and gaol fees, and charges of proceedings under this act to obtain the discharge of the insolvent, shall be first paid, and then deducting all such costs, charges and expenses as shall be necessarily laid out and expended by the assignee or assignees, together with his or their commissions for his or their care and trouble therein, the residue shall be divided equally among the creditors, in which division no preference shall be given to debts due by specialty.

Assignees to take an oath
K&R. v 1, 437
§ 21

Their compensation

Costs of suit, &c. how paid
7 John. Rep.
374

No preference of debts due by specialty

Assignees to bring no suit in equity without consent of creditors
 K&R v. 1. 438 § 23
 Creditor not proving his debt precluded from his dividend, but may receive it on the second dividend by proving his debt

Insolvent allowed 5 per cent if his estate yields 70 cents in the dollar
 K&R v. 1. 438 § 23

Landlord's right to distrain not affected, Sec. K&R. v. 1. 438 § 24

The recorders of New-York, Albany and Hudson, and certain commissioners, etc. to execute this act.
 K&R v. 1. 438 § 25
 Sec. 28, c. 134
 Sec. 30, c. 107 § 8
 Sec. 31, c. 2
 Sec. 31, c. 229
 Sec. 33, c. 144
 W. v. 5. 117
 W. v. 1, 408
 In case of sickness, etc. of chancellor, etc. who may act.

XXIII. And be it further enacted, That no suit in equity shall be commenced by any assignee without the consent of the majority of the petitioners or creditors who consented to the assignment with respect to the amount of their debts as aforesaid, at a meeting held for that purpose; and if any creditor shall neglect or refuse to give notice of and prove his debt within one year and an half after the assignment, and a division of the whole estate be made, such creditor shall not be entitled to a dividend, and the whole money shall be divided by the assignees among the other creditors entitled thereto; but in case the whole of such insolvent's estate shall not be divided and settled by the time by this act appointed for the first division, and such creditor shall prove his debt before the time appointed for the second division then such creditor shall, before a second division be made among the other creditors, have his said dividend, or so much money as he would have been entitled to on the first division had his debt been then proved; but no creditor shall be admitted to prove his debt in order to entitle himself to a share in the insolvent's estate after a second division, but shall by this act be debarred from any share thereof.

XXIV. And be it further enacted, That every insolvent who shall be discharged by virtue of this act, and in all things conform to the directions thereof, shall be allowed the sum of five per cent on the nett produce of all his estate that shall be recovered or received by the said assignee or assignees, to be paid to him by such assignee or assignees in case the nett produce of the said estate, after such allowance made, shall be sufficient to pay the creditors of such insolvent who shall prove their debts in the manner directed by this act, the sum of seventy cents in the dollar, and so as the said five per cent shall not amount in the whole to above the sum of five hundred dollars.

XXV. And be it further enacted, That nothing in this act contained shall be construed to deprive landlords of the right of distraining for or securing their rents which by law they had before the making of this act.

XXVI. And be it further enacted, That the respective recorders of the cities of New-York, Albany and Hudson, and the commissioners appointed by law to perform certain duties of a judge of the supreme court, shall be ex-officio commissioners, equally authorised and required with a judge of the supreme court, to do and execute the powers and trusts which such judge is authorised and required to do and execute by virtue of this act; and that whenever, upon the application of an insolvent debtor, or his creditors, day may be given by a judge of the supreme court, or the chancellor, to attend in the said cities of New-York and Albany, in case of the death, sickness or absence of the chancellor or judge, either of the said recorders or commissioners shall discharge the duties required by this act, in the like manner as might have been done by the said chancellor or judge; and that whenever, upon such application as aforesaid, day has been given, or shall be given, by the chancellor of this state, or any judge of the supreme court, to attend before him for any of the purposes specified in this act, it shall and may be law-

ful, in case of the death, sickness, absence, resignation or removal from office of the said chancellor or judge, for the successor in office of the chancellor, or any other judge of the said court, to discharge the duties required by this act, in like manner as aforesaid; and that whenever, upon the application of any insolvent debtor, or his creditors, day has been given, or shall be given, by either of the said recorders, or any commissioner authorised by law, to attend before him for any of the purposes specified in this act, it shall and may be lawful, in case of the death, sickness, absence, resignation or removal from office of any such recorder or commissioner, for the chancellor, or any judge of the supreme court, or for the successor in office to such recorder or commissioner, to discharge the duties required by this act, in like manner as might have been done by such recorder or commissioner, before whom day may have been given as aforesaid.

The like as to recorders, &c.

XXVII. *And be it further enacted*, That all such documents and papers as are required by this act to be presented to the chancellor, or any judge, commissioner or other officer, previous to the granting of the order for giving notice of the application to creditors, shall be retained by such chancellor, judge or officer, on granting such order, and be by him delivered, or safely transmitted, to the clerk of the court of common pleas of the same county, in case the application is to be made to a court of common pleas or a judge thereof; but in case such application is made to the chancellor, or a justice of the supreme court, or commissioner, or one of the said recorders, all such papers and documents shall be filed in the clerks offices of the supreme court of this state, for the benefit and use of all persons interested therein.

Papers of insolvent where to be filed.
W. v. S. 345
Sess. 32, c 147
§ 6

XXVIII. *And be it further enacted*, That it shall not be lawful for the state printer to demand or receive more than two dollars and fifty cents for inserting the notice of an insolvent, and furnishing the papers for six successive weeks; nor more than three dollars for inserting such notice, and furnishing such papers, for ten successive weeks.

Compensation to state printer for advertisements limited.
Sess. 33, c 196
§ 17

XXIX. *And be it further enacted*, That in every action in which the defendant or defendants shall plead one or more discharges, obtained by virtue of this act, or of any former act of insolvency, it shall and may be lawful for the plaintiff or plaintiffs to reply, that such discharge or discharges was or were obtained by fraud, and to conclude the same replication to the county, and to annex thereto a notice, in which shall be specified the several acts of fraud, of which the plaintiff or plaintiffs intend to give evidence on the trial of such action; and the plaintiff or plaintiffs may, on the trial of such action, give evidence of any one or more of such act or acts as shall be specified in such notice, and which, if proven, will avoid such discharge or discharges.

To a plea of insolvent relying on his discharge how plaintiff may reply.
W. v. S. 319
Sess. 33, c 196

And give evidence.

XXX. *And be it further enacted*, That if any person, in any oath or affidavit to be taken or made, under or in pursuance of this act, shall wilfully and knowingly affirm or swear falsely, the

False swearing under this act declared perjury.

person so offending shall be liable to the same pains and penalties as those who are convicted of wilful and corrupt perjury.

[Other cases relative to *Insolvents*, and contracts relating to them, &c.—1 *Caines* Rep. 9, 11, 175, 244, 427.—3 *Ib.* 100, 154.—1 *John. ca.* 51.—1 *John. Rep.* 117, 143, 369, 370.—2 *Ib.* 235, 274, 294, 342, 386, 487.—3 *Ib.* 71, 543.—4 *Ib.* 410, 536.—5 *Ib.* 412.—6 *Ib.* 333.—7 *Ib.* 36, 117.—8 *Ib.* 202.—9 *Ib.* 263, 295, 392.—10 *Ib.* 63, 67.]

CHAP. VI.—(R.L.)

An ACT relative to the Office and Duties of the Treasurer of this State.

Passed February 25, 1813.

[Br. ed. 8, 84.—V.S. v. 1, 84, 278, 334, 338.—*Ibid.* v. 2, 506, 518, 560, 590, 617, 637.—Constitution of the State, Art. XXII.—J.&V. v. 1, 84, 173, 73, 98, 100, 224, 299, 300, 315.—*Ibid.* v. 2, 138, 141, 171, 219, 373, 440.—Gr. v. 1, 34, 143, 65, 260, 460.—*Ibid.* v. 2, 472, 49, 180, 186, 202, 213, 263, 446, 374.—*Ibid.* v. 3, 52, 75, 149, 235, 357, 384, 392, 457.—K.&H. v. 1, 222, 272, 297, 477, 533, 556, 583.—W. v. 3, 324, 614.]

Treasurer
how and when
modified of his
appointment.
K&R v 1, 222
W. v. 3, 324
Sess. 26, c 1
§ 1
13 Jan. 1. c 34
3 Bl. Com. 44

Oath of office.

To give security.

Condition of the bond.

Office to be kept in Albany.
K&R v 1, 223
§ 2

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That as often as a treasurer of this state shall be appointed, the secretary of this state shall forthwith give notice thereof to the person so appointed, and such person, if he accepts the said office, shall, before he enters upon the execution thereof, and within ten days after such notice, appear before one of the justices of the supreme court, and take the following oath: "I, appointed treasurer of the state of New-York, do solemnly and sincerely swear and declare, in the presence of Almighty God, that I will, during my continuance in the said office, well, faithfully and honestly, to the best of my knowledge and abilities, execute all and every of the duties appertaining to the said office; and that I will not, on any occasion or pretence, apply any money, securities or other effects, which may or shall come into my hands, belonging to the said state, to any private use or purpose whatsoever; and that whenever called on by the legislature, I will exhibit a true account of such monies, securities and other effects, under this my oath of office. So help me God." And shall also, within the same time, and before he enters upon the execution of his office, give bond, in the sum of fifty thousand dollars, to the people of this state, with not less than four sufficient sureties, to be approved of by the president of the senate and the speaker of the assembly, conditioned that such person shall and will faithfully and honestly execute and perform the duties of the office of treasurer of this state, which bond shall be lodged in the office of the secretary of this state, and shall be deemed to extend to the faithful execution of the said office of treasurer by such person, until a new appointment of treasurer be made, and a new bond given, under such appointment.

II. *And be it further enacted*, That the said office of treasurer shall continue to be kept and held in the public building erected for that purpose, in the city of Albany.

III. *And be it further enacted*, That the treasurer shall always keep a bank book, in which shall only be entered his account of receipts and monies drawn from the banks in which he shall make deposits as treasurer; that he shall not be authorised to draw any monies therefrom, unless by checks, subscribed by him as treasurer, and countersigned by the comptroller of this state; that he shall exhibit such book on the first Tuesday in every month, and oftener if required, to the comptroller, for his inspection and examination; and it is hereby made the duty of such comptroller carefully to inspect the accounts of the debits and credits in such book, and if he discovers any irregularity or deficiency therein, forthwith to report, in writing, the nature and extent of such irregularity or deficiency, to the person administering the government of this state, and if it shall thereupon appear to the person administering the government of this state, that the treasurer has, in any particular, wilfully violated his duty, it shall be lawful for him forthwith to declare the office of treasurer vacant: and that the New-York state bank shall be the place of deposit for all monies which may at any time hereafter be in the treasury of this state, except such sums as may be deposited to the credit of the treasurer in the bank of New-York. And the treasurer is hereby directed and required to deposit all monies which may from time to time come into his hands, on account of this state, in the said New-York state bank, within three days after receiving the same; and the monies so deposited by the treasurer, shall be placed to his account as treasurer: and it shall be the duty of the comptroller to procure from the books of the said bank, monthly statements of the monies which shall be received into, and paid out of, the same, on account of the treasurer of this state.

IV. *And be it further enacted*, That in case of the death or inability of any treasurer to execute his office during the recess of the legislature, or in case the person administering the government of this state shall declare the office of treasurer vacant, pursuant to the third section of this act, then, and in such case, it shall be lawful for the president, directors and company of the New-York state bank, to execute the office of treasurer, in respect to the receiving and paying money, in the same manner as the treasurer of this state is or shall be authorised and directed to do by law, until other provision be made; and the person administering the government of this state shall, by proclamation, give public notice of such death, inability or vacancy.

V. *And be it further enacted*, That the treasurer of this state shall annually lay before the legislature, at their first meeting after the first day of January in every year, a true and exact statement of the balance in the treasury due to the people of this state, with a summary of the receipts and payments of the treasury during the preceding year.

VI. *And be it further enacted*, That if any person appointed to the office of treasurer of this state, shall, after a new appointment be made, and after the execution of the office under such new appointment be commenced, procure and file in the office of the secretary of this state, a certificate, duly executed by the

Treasurer to keep a bank book.
Sess. 26, c 1

§ 2 All checks to be signed by him as treasurer.

And the bank book to be exhibited monthly to the comptroller, who shall inspect the accounts.

If any irregularity exists, the governor to vacate the office of treasurer.

K&R. v 1, 233
W. v. 2, 614

§ 3 Place of deposit for public monies.

Treasurer to make deposits in the bank.

To be placed to his account as treasurer.
Comptroller's further duty.

If office of treasurer becomes vacant in recess of legislature how to be filled.

W. v. 3, 614
Sess. 27, c 39

§ 4

Treasurer to report to the legislature annually.
K&R. v 1, 233

§ 4

His bond when discharged.
K&R. v 1, 233

§ 6

committee to be appointed to settle and audit the accounts of such person, as treasurer, expressing that his accounts, as treasurer, are regularly stated and balanced; and also that the balance of monies, securities and other effects, if any there be, are actually in the treasury, or deposited as by law directed, such certificate so filed in the office of the said secretary shall be a discharge of the bond given by such person, and his sureties under the former appointment, and such bond may thereupon be delivered up by the said secretary to such person, or his sureties, to be cancelled.

CHAP. XLII.—(R.L.)

An ACT relative to the Office and Duties of the Comptroller of this State.

Passed April 2, 1813.

[Gr. v. 3. 380.—K&R. v. 1. 581.—W. v. 3. 615, 645.—Ib. v. 4. 308, 589.—Ib. v. 5. 90, 416, 473.—Sess. 33. ch. 53, 193.—Sess. 34. ch. 78. 189, 206.—Sess. 35. ch. 3, 17.]

Comptroller—
His powers
and duties.
K&R v. 1. 581
§ 1.
Sess 35. ch. 17.
W. v. 4. 90.
Sess 30 ch. 74.
[Office of
Comptroller
first instituted
February 17,
1797.—*Vide*
Gr. v. 3. 380.]

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly,* That the office of comptroller, of this state, shall continue without limitation of time; and it shall be the duty of the comptroller to state all accounts between this state and the United States, and to examine and liquidate the claims of all persons against this state, in cases in which provision shall have been made by law, and in cases where no such provision shall have been made, or where he cannot liquidate any claim without further legislative provision, he shall examine and report the same, and the facts concerning it to the legislature, with his opinion thereon; and to examine, adjust and settle, the accounts of all persons indebted to this state, and certify the amount or balance to the treasurer, and to draw warrants on the treasurer for the payment of the salaries and wages of all the legislative, executive, judicial and ministerial officers of the government of this state, and also for the payment of all monies by law directed to be paid to any other person, which warrants shall be paid by the treasurer; and to keep an account between this state and the treasurer, and therein charge him with the balance in the treasury, and with all monies received by him, and credit him with all warrants drawn on him as aforesaid; and to exhibit to the legislature annually, at their first meeting after the first day of January, a complete statement of the funds of the state, and of the annual revenue thereof, and of the amount of the salaries of the officers of government, and other contingent expenses, and other appropriations paid in the preceding year, distinguishing which are permanent or temporary, and suggest any improvements that may be made in the premises; and to loan upon good landed security, in this state, all monies which may at any time be in the treasury, not otherwise appropriated, or necessary to be retained for the support of the government, not exceeding one thousand dollars to any one person, taking a bond

To report to
the legislature
annually.

To make
loans on mort-
gage.

and mortgage in the name of the people of this state, to secure the re-payment thereof, with interest, at the rate of seven per cent. per annum, the interest to be paid annually, and the principal at the end of ten years; and the mortgage to contain a covenant, that the mortgaged premises are free from all incumbrances whatsoever, and the bond to be conditioned, as well for the performance of the covenants contained in the mortgage, as for the payment of the money loaned, with the interest, and the premises mortgaged shall always exceed in value the amount of the sum so loaned, and no money shall be advanced to any borrower, until such bond and mortgage shall be duly executed, and the mortgage duly acknowledged, or proved, and registered according to law, in the office of the clerk of the county in which the mortgaged premises shall be situated, or in the office of the secretary of this state, and be delivered to the comptroller, and such certificates as he shall think necessary to shew that the mortgaged premises are free from all other incumbrances, and then the comptroller shall give the borrower a warrant on the treasurer for the money so loaned.

II. *And be it further enacted*, That it shall be lawful for any person indebted by mortgage to the people of this state, or to any other person, except loan officers, in trust for the said people, at any time to pay to the treasurer the whole sum due on such mortgage for principal and interest, or any part thereof, and the comptroller is hereby directed to loan the principal sum, or any part thereof so paid, in the manner and on the terms above directed, for such time as remained unexpired for the payment thereof by such mortgage; and upon the payment in full of any such mortgage, the treasurer's receipt countersigned by the comptroller, setting forth that the whole sum due on any such mortgage hath been paid, shall be a sufficient discharge of such mortgage; and the secretary of this state, or county clerk, in whose office any such mortgage shall have been registered, shall enter a minute of such payment on the margin of the registry of such mortgage.

III. *And be it further enacted*, That it shall be lawful for the comptroller, by a writing under his hand, and the seal of his office, to discharge any part or sub-division of any lot of land mortgaged to the people of this state, from the effect of the mortgage thereon, whenever the owner of such part shall have paid into the treasury the full proportion of interest and principal due on any such part; and the said certificate shall be sufficient to warrant the secretary of this state, or any county clerk, to make a minute thereof on the margin of the registry of any such mortgage, and such minute shall operate as a discharge of such registry so far as it respects the part of the mortgaged premises intended to be discharged; and it shall be the duty of the comptroller, upon the payment in full as aforesaid, of any part or sub-division of a lot of land which may have been purchased from, but which shall not then have been granted, or conveyed by the state, to certify under his hand and seal of office, that such part or sub-division hath been so paid off; and it shall thereupon be lawful for the commissioners of the land office, to issue letters pa-

Comptroller to loan certain monies paid in, on mortgage. R.H. v 1. 583 § 2. W. v. S. 90. Secs. 30, 31, 74.

Mortgages how to be discharged.

Comptroller may in certain cases discharge a portion of the lands mortgaged from such mortgage W. v. S. 90. Secs. 9 ch. 157 Secs. 34, ch. 206.

When letters patent may issue therefor.

Proviso.

tent for the part or sub-division so paid off, to such person or persons as shall be entitled thereto: *Provided*, The person claiming the benefits of either of the provisions of this section, shall produce a map and return of survey, shewing particularly the part or sub-division of a lot to be paid off: *And provided also*, That such person shall produce satisfactory proof, that the residue of the lot is sufficient security for the sum remaining due thereon.

Comptroller may open accounts with the owner of such portions, &c.
Sess. 34. ch. 306

IV. *And be it further enacted*, That it shall be the duty of the comptroller, on application to him for that purpose, to open accounts in his office, against any person, for any part or sub-division of any lot of land, purchased from the state, for the proportionate part of the consideration due to the state, on any such part or sub-division, and thereafter to give credits for payments on the several parts or sub-divisions, as the persons making such payments may require; and when any part or sub-division shall have been fully paid, if the same be a part or sub-division of a lot mortgaged to the people of this state, the comptroller shall, under his hand and seal of office, discharge any such part or sub-division from the mortgage; and if the part paid off, be a part or sub-division of a lot purchased from, but not granted or conveyed by, the state, then the comptroller shall certify under his hand, and seal of his office, that such part or sub-division hath been so paid off; and it shall, thereupon, be lawful for the commissioners of the land office, to issue letters patent, for the part or sub-division so paid off, to such person or persons as shall be entitled thereto.

When letters patent to issue

He may apply payments made to such portion of a lot that should have been originally intended.
Sess. 39. ch. 3.

V. *And be it further enacted*, That it shall be lawful for the comptroller to pass any payments to the credit of any part or sub-division of a lot, purchased from this state, which shall appear, by satisfactory proof, to have been originally intended to be paid on such part or sub-division, or by, or for the use and benefit of the person claiming the credit, whether so expressed in the receipts or not: *Provided however*, That no part of any such payments shall go to the reduction of the principal due on any such part or sub-division of a lot, unless the payments made shall exceed the interest calculated on the principal due on such part or sub-division of a lot, to the day when the part or sub-division of a lot is to be paid off, or a new account be opened therefor: *And provided also*, That where it shall appear that separate receipts were given by the treasurer, for any payments which may be claimed to be credited to the account of any part or sub-division as aforesaid, the receipts shall in such case be delivered up to the comptroller to be filed in his office.

Proviso.

Further proviso.

Comptroller's compensation from such part owners.
Sess. 34. c. 306

VI. *And be it further enacted*, That it shall be lawful for the comptroller to demand and receive for every part or subdivision of a lot so as aforesaid to be paid off and discharged, and also for every new account to be opened for a part or subdivision of a lot as aforesaid, two dollars; and such payment for opening a new account shall be deemed and considered in full for all services thereafter to be performed as to such new account, and for the certificate of discharge when the account shall be paid off.

Comptroller to vote: directors in

VII. *And be it further enacted*, That the comptroller shall be and hereby is authorised, either by himself or proxy, to vote at

all elections of directors of banks, or other institutions in which the state is interested and entitled to vote, for and on behalf of this state. banks, etc. Sec. 34. c 246 § 32.

VIII. *And be it further enacted,* That the comptroller be and he is hereby authorised and required to draw in favor of the treasurer, on the president and directors of all banks and of all other companies or institutions in which the people of this state now own or may hereafter own any stock or capital, for the dividends, profits or interest on such stock or capital, as the same may from time to time be declared and become due. To draw for the dividends, etc. Sec. 34. c 189 § 7

IX. *And be it further enacted,* That no monies shall be paid out of the treasury of this state, except on the warrant of the comptroller, and that all receipts for money hereafter to be paid to the treasurer, shall be taken to the comptroller, who shall countersign the same, and enter them in the proper book or books for that purpose, in his office, to the credit of the person by whom such payment shall be made; and no receipt unless so countersigned, shall be good evidence of such payment. No monies to be paid out of the treasury but by his warrant, K&R. v. 1. 583 § 8

X. *And be it further enacted,* That all deeds and conveyances, other than mortgages belonging to the people of this state, shall be deposited in the office of the secretary of this state, and that all mortgages, bonds, obligations and assurances for money given to the people of this state, or hereafter to be given to the said people, and all mortgages, leases and bonds in the hands of the surveyor-general and belonging to the said people, or which may hereafter be taken by him in behalf of the said people, shall be deposited and kept in the office of the comptroller; and all monies which shall from time to time become due to the people of this state on any of the said mortgages, bonds, obligations, or assurances, and also all monies which shall become due from the loan officers of the respective counties, shall be paid to the treasurer of this state. Certain deeds and papers to be deposited with him, etc. K&R. v. 1. 584 § 6

XI. *And be it further enacted,* That such of the certificates for stock of any kind owned by the people of this state as are now deposited in the bank of New-York and the bank of Albany shall continue to be deposited there, and that such other certificates for stock owned by the people of this state as have not yet been deposited in any bank for sake keeping, shall be deposited in such banks as the comptroller may select. Certain certificates for stock where to be deposited. K&R. v. 1. 584 § 7

XII. *And be it further enacted,* That the president, directors and company of the bank of New-York be and they are hereby authorised to receive the interest which shall from time to time become due on the three per cent. stock owned by the people of this state, and the monies so received shall be credited to the people of this state, and be paid to the treasurer on the order of the comptroller. Bank of New-York to receive certain interest and dividends for the state. K&R. v. 1. 584 § 8

XIII. *And be it further enacted,* That the treasurer of this state, on the warrant of the comptroller, be and he is hereby directed to refund and pay all such sum or sums of money as have been or may at any time be paid into the treasury through mistake, to the person who may have made such payment through mistake: *Provided however,* That this provision shall not be construed to extend to payments on account of quit rents and taxes, Monies paid by mistake into the treasury to be refunded. W. v. 4. 473 Sec. 32. c 94

nor to payments which may be alleged to have been made on a wrong bond and mortgage to the state.

Comptroller
to attend the
legislature, &
attendances to
him how to be
made.
R and R v. 1
488 § 13

XIV. *And be it further enacted*, That it shall be the duty of the comptroller to attend the legislature during their sessions, and all petitions and applications to the legislature for pecuniary compensation when referred to the comptroller to make order, shall be by concurrent resolution, and when referred to him to report thereon, shall be by order of the house in which such petition shall be referred.

To call on all
persons hav-
ing public
monies, to set-
tle their ac-
counts.
R & R. v. 1, 488
sec. 14
To issue noti-
fications for
the purpose.

XV. *And be it further enacted*, That it shall be the duty of the comptroller to call on all persons intrusted with, or who shall have received any monies belonging to this state, and not accounted for the same, to settle their accounts; and he is hereby authorised to issue a notification to every such person, or in case of his death, to his heirs, devisees, executors or administrators, requiring him or them to render to the comptroller at such time as he shall think reasonable, not less than sixty nor more than ninety days from the date of the said notification, all his accounts and vouchers for the expenditure of the said monies, and in default thereof, suits at the discretion of the comptroller shall be commenced for the same without further notice; and the party sued as aforesaid, unless sued as heir, devisee, executor or administrator, shall be subject to the costs and charges of such suits, whether the ultimate decision shall be against him or in his favor.

And on de-
fault to sue
them.

Form of noti-
fication, and
how served
and returned.
R & R. v. 1, 488
§ 15

XVI. *And be it further enacted*, That the said notification shall be in the name of the people of this state, and shall be served by the sheriff of the county where the person to be notified shall reside, or his deputy, by delivering a copy thereof to the person to be notified, or by leaving such copy at his dwelling-house or usual place of abode, at least forty days before the time fixed in such notification for rendering such account as aforesaid, and the return of such notification to the comptroller's office, with the certificate of the sheriff endorsed thereon, that such service has been made by delivering a copy of such notification to the person so notified, shall be legal evidence of such proceedings, and shall be sufficient for the recovery of the costs and charges: *Provided nevertheless*, That in all cases where such return shall be made of the service of such notice, and the person so notified shall, within the time mentioned in such notification, produce to the comptroller his accounts and vouchers as aforesaid, such person shall not be subject to costs and charges, unless it shall be found that he is indebted to the people of this state.

Examine

How com-
ptroller to pro-
ceed to settle
accounts
R & R. v. 1
488 § 16

XVII. *And be it further enacted*, That in all cases where accounts shall be rendered to the comptroller within the time limited in such notification, or without any such notification being issued, the comptroller shall immediately proceed to examine such accounts and vouchers, and if the same are proper or sufficient in his opinion, he shall thereupon liquidate and settle the same accounts; but if any of the necessary vouchers are wanting or insufficient in his opinion, he shall give notice thereof to the party, and require him to supply such defect within a rea-

reasonable time, not less than sixty nor more than ninety days; after the expiration of which the comptroller shall liquidate and settle such accounts upon the vouchers and proofs which shall have been delivered to him; and when the comptroller shall have settled any account, he shall deliver or transmit a copy of such settlement to the party, and if any balance shall be thereby certified to be due to the state, and the same shall not be paid to the treasurer within ninety days thereafter, the comptroller shall deliver the account thereof to the attorney-general, who shall cause the same to be prosecuted and recovered; and in all such cases a copy of such settlement, certified by the comptroller, shall be deemed good and sufficient evidence to support such action; but it shall be lawful for the defendant in any such action to plead and give in evidence all such matters as shall be legal and proper for his defence or discharge; and if any such defendant shall, upon the trial in any such action, give any evidence other than such as was produced to the comptroller, then and in every such case the defendant shall be subject to the costs and charges of such suit, whether the ultimate decision shall be against him or in his favor.

When and how to sue
liquet

What shall be
evidence
against him

As to costs:

XVIII. *And be it further enacted*, That in all cases where any number of commissioners, or other persons shall have received any monies for which they are accountable to this state, it shall be lawful for the comptroller, at his discretion, to liquidate and settle the accounts of any one or more of them separately, and in such case no such person shall be allowed to plead in abatement to any suit to be brought for any balance which shall be certified to be due from him or them, or to give in evidence upon the trial thereof, that any other person was concerned with him or them in the receipt or expenditure of the said money.

Comptroller to settle with any persons who have received public monies.
K&R. v. L. 367
§ 17

Defendants not to plead in abatement; that, etc.

XIX. *And be it further enacted*, That in case any person who shall be notified as aforesaid to render his account and vouchers, shall not do so within the time limited in such notification, then and in every such case, if the comptroller can ascertain the amount thereof, he shall state an account thereof, and compute and add thereto the interest thereof at the rate of seven per cent. per annum from the time the same was received to the time fixed in such notification for rendering the account thereof, and transmit a copy of such account to the attorney-general, to be prosecuted and recovered as aforesaid; and in all such cases a copy of such account, certified by the comptroller shall be deemed good and sufficient evidence to support such action, and the defendant shall be subject to the costs and charges of such suit, whether the final decision shall be against him or in his favor, except in suits against heirs, devisees, executors or administrators; but that it shall be lawful for the defendant in any such action to plead and give in evidence all such matters as shall be legal and proper for his defence or discharge.

Persons neglecting to settle after being notified, how to be proceeded against and sued
K&R. v. L. 367
§ 18

What shall be evidence.

XX. *And be it further enacted*, That in all such suits it shall be sufficient to state in the declaration that the defendant, or if the suit be against heirs, devisees, executors or administrators, the ancestors, testator or intestate, on the day of the settlement of such

How to declare in such suits.
K&R. v. L. 367
§ 19

account by the comptroller, and at a certain place was indebted to the people of the state of New-York, in the sum therein stated to be due, specifying the same, for so much money before that time by him received to their use, and so thereof being indebted, he the defendant or the ancestor, testator or intestate, in consideration thereof, afterwards, the same day and year and at the place aforesaid, promised to pay the same to the people of the state of New-York, and to charge the breach of such promise in common form, and to give the special matter in evidence.

Comptroller
when to bor-
row monies.
H. & R. v 1
585, 590, 51
W. 45, 515
Sec. 27, c 30
§ 3

XXI. *And be it further enacted*, That if at any time there shall be legal demands on this state, by law directed to be paid, which there shall not be sufficient money in the treasury to satisfy, then and in every such case it shall be lawful for the comptroller, in the name and on behalf the people of this state, to borrow a sum sufficient for that purpose of any of the banks in this state in which the state holds stock, at the usual discount, and to draw a warrant for the same in favor of the treasurer and charge him with the amount thereof, but shall take care to draw a warrant on the treasurer for the re-payment thereof as soon as there shall be money sufficient for that purpose in the treasury.

Nothing in
this act to
impair
any other
remedy in
behalf of the
state.
H. & R. v 1
585 § 31

XXII. *And be it further enacted*, That nothing in this act shall be construed to take away or impair any legal remedy which might be used if this act was not in force, for the recovery of any debt or debts now due or hereafter to become due to this state, either in law or equity, from any person or persons whomsoever, nor to apply to any accounts or transactions that existed between the people of this state, and any individuals previous to the first day of January, in the year one thousand seven hundred and eighty-eight.

A deputy
comptroller,
his powers and
duties.
H. & R. c 78
§ 1, 2

XXIII. *And be it further enacted*, That it shall be lawful for the deputy comptroller of this state to do and perform all, or any of the duties which the comptroller is authorised or directed by law to do and perform, except as to drawing warrants on the treasury and auditing public accounts, which the comptroller shall continue exclusively to do; and the said deputy comptroller shall be allowed, as a compensation for his services, a salary of one thousand dollars a year, payable quarter yearly on the warrant of the comptroller.

Comptroller's
salary, &c.
W. v 1, 416
Sec. 31, c 240
sec. 37

XXIV. *And be it further enacted*, That the comptroller shall be entitled to a salary of two thousand dollars a year, together with the necessary expenses of his office for clerk hire, stationary and fire-wood, provided the same shall not exceed fifteen hundred dollars a year, which said salary and office expenses shall be paid to him by the treasurer, in quarter-yearly payments, in the same manner as the other officers of government are paid.

Comptroller to
cause the pub-
lic building in
Albany to be
kept in repair.
W. v 3, 645
Sec. 27, c 100,
sec. 18

XXV. *And be it further enacted*, That the comptroller be and he is hereby authorised, from time to time to cause such repairs to be made to the public building in the city of Albany, as shall be deemed necessary for its preservation, and to draw his warrant on the treasurer for such sums as shall be necessary to defray the expense thereof: *Provided*, The same shall not in any one year exceed one hundred dollars,

Revised

XXVI. *And be it further enacted*, That the treasurer shall pay all such sums as the comptroller shall certify to be due for printing which has been or which shall be hereafter done for this state, in pursuance of any law or concurrent resolution of the senate and assembly.

To pay for certain printing, etc.
W. v. 4, 308
Sess. 28, c. 135
§ 16

XXVII. *And be it further enacted*, That the comptroller be and he hereby is authorised, whenever application shall be made to him by the president and directors of any bank, for the payment of a part or the whole of any sum previously borrowed on behalf of the state from such bank, to borrow on behalf of the state from any other bank, in which the state holds stock, a sum sufficient to make such payment, and to make the same accordingly.

To borrow money for certain purposes.
Sess. 33, c. 88
§ 2

XXVIII. *And be it further enacted*, That the comptroller, on the production to him of sufficient proof of the loss of any prize ticket or tickets, in any of the lotteries of this state, shall be authorised to draw his warrant upon the treasurer for the payment of the same: *Provided*, That the person claiming such prize money, shall enter into a bond to the people of this state, with sufficient sureties to double the amount of such prize money, conditioned that the said prize money shall be refunded in case the said ticket or tickets shall thereafter be presented for payment.

To pay prizes in lotteries of tickets which are lost.
Sess. 33, c. 193
§ 45

CHAP. LXXVII.—(R.L.)

An ACT concerning the Surveyor-General and the Secretary of State.

Passed April 6, 1813.

[Gr. v. 1. 17, 42.—Ib. v. 2. 200, 265, 281, 369, *et seq.*—Ib. v. 3. 146, 195, 238, *et seq.*—K. & R. v. 1. 307.—W. v. 3. 185.—Ib. v. 4. 250.—Ib. v. 5. 69.—Sess. 34, c. 246.—Sess. 35, c. 239.]

1. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the person administering the government of this state, by and with the advice and consent of the council of appointment, shall as often as may be necessary, appoint a surveyor-general for this state, who shall keep his office in the public building in the city of Albany: *Provided however*, That the person now holding the said office shall continue therein during the pleasure of the Council of Appointment; and that the surveyor-general be and he is hereby authorised and required, from time to time, to dispose of all real estates forfeited to the people of this state, and not otherwise directed to be sold, in manner following, viz: Every estate so to be sold, shall be sold at public vendue, in the city of Albany, of the time and place of which, vendue notice shall previously be given by him for at least eight weeks successively, in the newspaper published by the printer of the state for the time being, in one other newspaper printed in the city of New-York, and in the newspaper of one other printer whose residence shall be nearest to the premises; and on

A surveyor-general to be appointed.
K. & R. v. 1. 307
§ 1
[Office of surveyor-general first created March 30, 1781; Gr. v. 1. 42]
Where to keep his office.
W. v. 3, 185
Duties of surveyor-general as to forfeited estates
To be sold at auction.
Notice to be given of the sale.

Purchaser to pay a fourth part of purchase money in 24 hours, & in 12 months the remainder,

and then to have a deed.

Form of deed.

And thereupon the right of the state to vest in purchaser.

To be deemed a warranty,

When forfeited estates are incumbered,

The facts, etc. to be stated how & when.

But in such case conveyance not to be deemed a warranty.

Surveyor-general or a magistrate may in certain cases administer oaths
K&L. v. 1. 307
§ 3

such sale the purchaser of any such estate shall, within twenty-four hours thereafter, pay the one fourth part of the money bid for the same, of which sale and payment the surveyor-general shall give him a certificate; and if such purchaser shall, within twelve months thereafter, pay the remainder of the consideration money into the treasury, the surveyor-general shall execute a conveyance to him for the estate so purchased; and the form of the conveyance to be given by the surveyor-general, shall be as follows, viz :—“ To all to whom these presents shall come,

I, surveyor-general of the state of New-York, send greeting;—Know ye that by virtue of the authority, vested in me by the laws of the said state, and in consideration of the sum of I have granted, bargained, sold, enfeoffed and confirmed, and by these presents do grant, bargain, sell, enfeoff and confirm, unto all the estate, right, title and interest of the people of the said state, of, in and to (here describe the lands or tenements) to have and to hold the premises hereby granted, bargained, sold, enfeoffed and confirmed to the said heirs and assigns, to the proper use and behoof of the said heirs and assigns forever. In testimony whereof I have hereunto set my hand and seal the day of in the year of our Lord and in the year of the independence of the said state.” That all the estate,

right and interest of the people of this state, of, in or to the lands or tenements in such conveyances mentioned, shall thereby vest in the grantee, his heirs and assigns; and such conveyance shall be deemed to operate as warranty from the people of this state for securing to the grantee, his heirs and assigns, the lands and tenements so conveyed; that in all cases where the surveyor-general, after having taken the advice of the attorney-general, shall deem forfeited lands to be subject to, or incumbered with, claims or controversy; and in all cases where he shall deem the people of this state to have a less interest than the absolute property in the whole of the lands, it shall be his duty in such cases, at the time and place of sale, and for at least three hours before the sale, to affix, in some public and convenient place there, a writing containing a state of all the material facts and circumstances relating to such claim or controversy, or relating to such interest of the state, as far as the same shall have come to his knowledge, to the end that all persons who shall be then and there attending, with intent to purchase, may be informed of such claim or controversy, and of the nature and extent of the interest of the state in the lands; but the conveyance in such cases shall not be deemed to operate as a warranty from the people of this state; and there shall accordingly be inserted in the conveyance, immediately before the words “ In testimony,” the words following, viz: “ These presents, however, are in no wise to operate as a warranty.”

II. And be it further enacted, That whenever it shall be necessary to authenticate by oath any business to be done by any person under the superintendence or direction of the surveyor-general, such oath may be administered either by himself or by any public officer authorised to administer oaths.

III. *And be it further enacted*, That the surveyor-general shall be and he is hereby empowered to demand from any supervisor of any town in this state a survey of so much of the bounds of such town as he cannot otherwise obtain: and it is hereby made the duty of such supervisor thereupon to cause such survey to be made, and within sixty days after such demand to deliver a map and description of such bounds to the surveyor-general, the costs and charges of which shall be defrayed by the towns respectively to which such bounds shall belong, in the manner in which other contingent charges of the towns are defrayed and paid.

When and how surveyor-general may demand surveys from the supervisor of the bounds of towns
K&R. v 1. 307 § 6

IV. *And be it further enacted*, That in case of the refusal or neglect of any supervisor to perform the duties enjoined on him as aforesaid, he shall forfeit and pay the sum of fifty dollars, to be recovered by the district-attorney of the district in which such supervisor shall reside, in an action of debt in any court of record in this state having cognizance thereof; and it is hereby made the duty of the said district-attorney to prosecute any delinquent in the premises, and the monies so recovered shall be delivered to the surveyor-general, and by him be applied to the making of a map of the town delinquent as aforesaid.

Penalty on supervisor for refusal or neglect
K&R. v 1. 307 § 7
How sued for

District attorney to prosecute

V. *And be it further enacted*, That it shall be lawful for the surveyor-general to demand and receive the fees hereinafter mentioned, for the services to which they are annexed, to wit: For filing every paper, twelve and an half cents; for all original drafts, twenty-five cents; for each sheet containing one hundred and twenty-eight words, for entering every copy when requisite, and for copies of all papers on file, twenty cents for each sheet containing one hundred and twenty eight words; for every search, twelve and an half cents; for copies of maps, such sum as is usually charged for the like business; for surveys to be performed, at the rate of three dollars and fifty cents for the surveyor per day, exclusive of the reasonable expenses for the hire of men, horses and provisions.

Fees of the surveyor-general
K&R. v 1. 307 § 8

VI. *And be it further enacted*, That the surveyor-general shall from time to time account with the comptroller for all monies received by him in behalf of the state.

Surveyor-general to account therefor
K&R. v 1. 307 § 9

VII. *And be it further enacted*, That the secretary of this state shall from time to time, when thereunto required by the surveyor-general, furnish him with certified copies or extracts of such patents, Indian purchases, surveys and other papers as he shall signify to be requisite for the better execution of his trust.

Secretary of state to furnish surveyor-general copies of patents, &c.
K&R. v 1. 307 § 10

VIII. *And be it further enacted*, That it shall and may be lawful for the secretary of this state, and he is hereby directed to cause such of the records in his office, which are written in the Dutch language, and which shall be designated by the person administering the government of this state, to be translated into English, and to be transcribed in proper books to be provided for that purpose, which translations, when so transcribed, shall be deposited in the office of the secretary of this state as part of the public records thereof.

Certain Dutch records may be transcribed and translated
W. v 4, 250
Secs 28. c 25 § 5

IX. *And be it further enacted*, That the translator to be employed by virtue of this act shall, before he proceeds to execute this trust, take and subscribe an oath, before the chancellor or

Translator to take an oath
W v 4, 250
Secs 28. c 25 § 5

chief justice, well, truly and faithfully, according to the best of his ability, to make the said translations, which oath, certified by the said chancellor or chief justice, shall be filed in the secretary's office.

Comptroller to determine the compensation
W. v. 4. 290
Sess 23. ch. 96
§ 7

X. *And be it further enacted*, That the comptroller shall determine the amount of compensation to which such translator may be reasonably entitled for his services, and thereupon to draw his warrant on the treasurer for the same.

Postage of commissions and supersedeas to be paid by the state
W. v. 5. 69
Sess 30. ch. 82
§ 2

XI. *And be it further enacted*, That in cases where the secretary shall deem it advisable to transmit by mail any commission or supersedeas, he shall pay the charges of such transmission out of the fees of his office, and shall be allowed therefor in his settlement with the comptroller.

State-printer to furnish certain copies of the printed laws, &c.
Sess 35. c. 239
§ 18

XII. *And be it further enacted*, That the state-printer shall furnish such further number of the laws as shall be required from time to time by the secretary of this state, for the use of the persons entitled to the same by any law or concurrent resolution of the senate and assembly, and that the same compensation be made to the state-printer as is now provided for by contract with him,

Acts of Congress how to be distributed
Sess 34. c. 246
§ 41

XIII. *And be it further enacted*, That it shall be the duty of the secretary of this state to cause the acts of the congress of the United States, which now are or may hereafter be received at his office, to be distributed in the same manner as the laws of this state are now by law or concurrent resolution of the senate and assembly directed to be distributed.

CHAP. LV.—(R.L.)

An ACT concerning Actions of Ejectment commenced by the People of this State, and certain Duties of the Attorney-General.

Passed April 5, 1813.

[W. v. 3. 168, 394, 507.—Ib. v. 4. 312, 328, 643.—Sess. 35. ch. 7. § 2, 3.]

Attorney-general to proceed to a partition of lands held by the state in joint tenancy, or in common with others
W. v. 3. 207
Sess 27. c. 121
§ 11

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That it shall be the duty of the attorney-general, and he is hereby authorised to cause partition to be made of such tracts of land as are held in joint tenancy, or tenancy in common, in which the people of this state are interested; and for that purpose to do all such acts as any joint tenant, or tenant in common, is authorised to do by virtue of the act, entitled "an act for the partition of lands:" *Provided*, That in every case in which the surveyor-general, with the advice of the attorney-general, shall judge it for the interest of the people of this state to sell their right in any such lands, without a partition thereof previously made, the surveyor-general shall so sell the same.

Attorney-general to foreclose all mortgages given to the state.

II. *And be it further enacted*, That all notices required by law for the foreclosure of mortgages executed to the people of this state, shall be given by the attorney-general, who shall conduct

the proceedings necessary to perfect every such foreclosure, and release to the purchaser or purchasers of the mortgaged premises all the right and title of the people of this state: *Provided always*, That on every sale to be made as aforesaid, it shall be the duty of the attorney-general to bid for the mortgaged premises, in behalf of the people of this state, to the amount of the mortgage money remaining unpaid, together with the interest and costs accrued thereon.

Sess. 28, c 139
§ 33
W. v 4. 312
Sess. 29. c 19
§ 1
W. v 4. 328

III. *And be it further enacted*, That when the mortgaged premises are purchased as aforesaid for the benefit of this state, the comptroller shall audit the account of the attorney-general for the expenses of printing and other necessary disbursements which may have been made, and thereupon to draw his warrant on the treasurer for the same.

If mortgaged premises purchased in by the state, the expenses of printing, etc. to be audited and paid.
Sess. 28, c 135
§ 35
W. v 4. 312

IV. *And be it further enacted*, That on every such sale of lands hereafter to be made, it shall be the duty of the attorney-general to require of the purchaser or purchasers one eighth part of the purchase money, and for securing the remainder in six equal payments, in each successive year thereafter, with interest at the rate of six per cent. per annum, to accept a bond and mortgage on the premises sold, from the purchaser or purchasers, to the people of this state.

Purchasers of lands from the state to pay one eighth of purchase money and the residue to be secured by bond and mortgage payable, etc.
Sess. 29. c 10
§ 1
W. v 4. 328

And whereas doubts have arisen whether an action of ejectment can be sustained by the people of this state—For removal whereof,

V. *Be it further enacted and declared*, That every action of ejectment already commenced, or hereafter to be commenced, by the people of this state, shall and may be sustained and prosecuted to judgment and execution, in the supreme court of this state, in like manner as if such action had been commenced by an individual, any law or usage to the contrary notwithstanding: *Provided always*, That if any such action shall be commenced and prosecuted in the name of the people of this state, for the benefit of an individual, such individual shall, on application to the court in which the action shall be pending, be compelled to give security to the defendant for the payment of the taxable costs, in case such action shall be determined in favor of the said defendant.

Ejectments may be sustained in the name of the people of this state.
Sess. 29. c 10
§ 2
W. v 4. 328
4 Ed. 1. st. 3.
c 4.
17 Ed. 2. c 13
21 Jac. 1. c 14

VI. *And be it further enacted*, That the defendant in any such action of ejectment, in which the people of this state are immediately interested, shall not be entitled to recover costs of the plaintiff or his lessors, and for that purpose it shall be the duty of the said supreme court to direct the consent rule to be drawn specially.

Defendant in ejectment not entitled to costs against the state.
Sess. 29, c 10
§ 3
W. v 4. 328,
329.

VII. *And be it further enacted*, That in every case of a sale by the attorney-general, by virtue of any mortgage given for money belonging to the school fund, it shall be lawful for him, upon payment of interest in arrear, with the costs of such sale and one eighth part of the principal of such mortgages, to take from the purchaser a bond for the residue of the mortgage money, to the people of this state, payable in six equal yearly instalments, with lawful interest: *Provided always*, That the title to the lands to be mortgaged shall be clear, and the lands, exclusive of the

On sales of land mortgaged for money out of the school fund, purchase money how to be secured and paid.
Sess. 35. c. 7
§ 3
Proviso.

buildings thereon, shall be worth double the principal of such mortgage.

Advertisement
to specify
terms of sale.
Rem. 35. c 7
§ 3.

Proceedings
against per-
sons guilty of
intrusion, etc.
W. v 3. 168
Rem. 25. c 113
§ 13
4 Ed. 1. st. 3.
c 4.
17 Ed. 3. c 13
21 Jac. 1. c 14

Where several
debts due the
state, etc. one
suit only to be
brought.
W. v 3. 394
Rem. 26. c 61
§ 4

When suits
may be con-
solidated against
several per-
sons for debts
due the state.
W. v 4. 643
Rem. 29. c 187
§ 8

VIII. *And be it further enacted*, That it shall be the duty of the attorney-general to specify the terms aforesaid in the advertisement of every such sale.

IX. *And be it further enacted*, That the attorney-general, and the several district attorneys within their respective districts, shall file information against all such persons as shall be guilty of trespass or intrusion on, or to be found in the possession of, any lands belonging to the people of this state, as are or shall be set apart by law for special purposes; and it is hereby made the special duty of grand jurors to enquire into and present, and of the attorney-general, and of the several district attorneys within their respective districts, to use the utmost diligence to discover and prosecute, offenders in the premises.

X. *And be it further enacted*, That in all cases where debts are due to the people of this state by several mortgages, contracts or obligations, executed by the same person, only one suit shall be commenced against the debtor or his representatives for the monies so due.

XI. *And be it further enacted*, That when the attorney-general shall institute separate actions, in behalf of the people of this state, against several persons, on one mortgage, covenant or agreement, or who claim under the same title, it shall be his duty, whenever the defendants shall request it, to consent to a consolidation of such actions; and that in every such case there shall be but one taxation of costs against the defendants.

CHAP. XCV.—(R.L.)

An ACT concerning the Court of Chancery.

Passed April 10, 1813.

[§ 3 & L. v. 2. 203.—V.S. v. 1. 386.—Ibid. v. 2. 770.—Constitution of the State, art. XXV.—J.&V. v. 1. 23, 190.—Ibid. v. 2. 112, 274, 435.—K.&R. v. 1. 406, 439.—W. v. 3. 27, 458.—Ibid. v. 4. 615.—Sess. 35, c. 185.]

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the court of chancery shall be held at least twice in the city of Albany, and twice in the city of New-York, in every year, and at such other times as the chancellor shall think proper; and the chancellor shall appoint the stated terms of the said court, and alter the same as he thinks the public convenience may require; but the terms of the said court shall respectively be held eight days at least, and longer if necessary: *And further*, The register of the said court shall keep his office in the city of Albany, or city of New-York, as the chancellor may direct, together with the records, books and papers thereto belonging; and an assistant register, to be appointed by the chancellor during his pleasure, shall keep his office in one of the said cities, as the chancellor may appoint, together with the records, books and papers thereto belonging; which assistant register shall perform all the duties of register

Terms of the
court of chan-
cery and when
held.
W. v 3. 27
Rem. 25. c 15
§ 1.

Register and
assistant regi-
ster where to
keep their
office.
W. v 3. 27.
Rem. 29. c 15
§ 2. 5.

For Sale of Infants - real estate - *See* *sup.* 37. Ch. 108 -
For Specific performance of agreement - *see* the same

in the city wherein he shall be placed, and be entitled to the like fees; but nothing herein contained shall restrain the register or assistant register from conveying any of the records, books or papers, in their respective offices, to the office of the other, or to any other place, as the course of legal proceedings in the said court may, in any case, require: *And further*, The clerks of the said court shall, from time to time, deposit with the register or assistant register, as the chancellor may direct, all records, books and papers, in their custody or care, relative to the business of the said court.

Duty of the clerks as to papers.
W. v. 3. 28.
Sess. 25. ch. 18.
§ 3

II. *And be it further enacted*, That the three seals of the said court, heretofore devised, shall be respectively deposited at such places as the said court shall direct, in the most convenient place for the administration of justice, that all writs and process issuing out of the said court shall be patent, and in such form expressive of the design thereof, as the said court shall from time to time establish, and shall be sealed with one of the said seals, that such writs or process as it may be necessary from their nature and object to direct to an executive officer to answer their exigency, shall be directed to the sheriff of the city or county where the same are to be executed, for the service of which, like fees shall be allowed as if the same had been issued from the supreme court, and that in cases in which such service is not *exactable** in the supreme court, the court of chancery may make such allowance therefor as shall appear reasonable and just.

Seals of the court.
K. & R. v. 1. 439

Writs to be patent.
W. v. 3. 28.
Sess. 25. ch. 18.
§ 8
How directed, and fees for service.

* So in the engrossed bill, it is presumed, by mistake, there being no such word—the word in the revised bill was 'required.'

III. *And be it further enacted*, That where the chancellor shall be a party to a suit in chancery, the bill shall be filed before the chief justice of the state, who shall thereupon proceed in like manner as the chancellor could of right do as a court of chancery in other cases, and the court of chancery shall be thereupon held in that case before the chief justice, and shall proceed to hear and determine the same according to the course and usage of the said court.

Chancellor may sue and be sued in chancery.
K. & R. v. 1. 442. § 1

IV. *And be it further enacted*, That the said court may enforce obedience to, or performance of, any of its decrees, by execution either against the body or the goods and chattels of the party required to perform the same; and in default of goods and chattels against the lands and tenements of such person, the forms of which execution shall be settled and approved of by the said court, and shall have the like force and effect as executions of a similar kind, issuing out of courts of common law, and shall be served and executed in like manner: *Provided*, That no goods or chattels, lands or tenements, shall be bound thereby as against an innocent *bona fide* purchaser without notice, until an actual levy or seizure shall be made thereupon.

Chancery may enforce its decrees by execution.
W. v. 3. 28.
Sess. 25. ch. 18.
§ 9.

Effect and force thereof.

Proviso.

V. *And be it further enacted*, That the sheriffs of the respective cities and counties in this state, shall be the officers of the said court, for the purpose of executing process, directed to them, or either of them, and shall be amenable to the said court in the execution thereof, and shall be subject to fine by the said court, for disobedience thereof, or any default therein, and the sheriff of the city or county where the said court shall at any time be held, shall, during the sitting thereof, be bound to give his at-

Sheriffs declared officers of the court.
W. v. 3. 28.
Sess. 25. ch. 18.
§ 7.

Fines on the
sheriff how col-
lected.

tendance in such manner as the said court may direct, upon pain of being fined, in the discretion of the said court; and all fines imposed, or to be imposed, on any sheriff, by virtue of this act, shall be estreated into the court of exchequer, and shall be there collected, and paid out as fines imposed in courts of common law are collected and paid out, and the evidence of such fine shall be a note thereof, certified by the register, or assistant register of the said court.

Decrees not
to be enrolled
but annexed
to the plead-
ings.
K. & R. v. 1.
439. § 3.

VI. *And be it further enacted*, That it shall not be necessary to enroll any decree or dismissal in the said court, but immediately after any decree shall have been pronounced, the bill and answer and other proceedings in the cause in which such decree shall have been pronounced, shall be delivered by the clerks of the said court to the register thereof, who shall annex and file the same in his office, together with a fair engrossed copy of the decree or dismissal thereupon, and also the reports and decretal orders which may have been made therein, but without any recital of the bill, answer, or pleadings, and shall annex the same after it is signed by himself and the chancellor, to the said bill, answer, and pleadings, which shall be of like effect as if the same had been enrolled: *And further*, That it shall be lawful to use paper instead of parchment in the proceedings of the said court, except as to writs and processes issuing therefrom, and the proceedings of the said court which have heretofore been supposed to be before the people of this state, shall hereafter be before the chancellor.

Paper instead
of parchment
may be used.
K. & R. v. 1.
440. § 4.

Suit when not
to abate by
the death of a
party.
K. & R. v. 1. 440
§ 5.

VII. *And be it further enacted*, That no suit in chancery shall abate by reason of the death of any one or more of the complainants or defendants, but the same shall survive to the surviving complainant, or against the surviving defendant, if the cause of action will admit of survivorship, and in such case, if the death of such person or persons shall be satisfactorily suggested and shewn to the court, the said action shall proceed against the surviving defendant or defendants, or in favor of the surviving complainant, or complainants, but if the cause of action will not admit of the doctrine of survivorship, but other persons shall become parties in interest, then, and in such case, the action shall abate only as to the person or persons so dying as aforesaid, and the surviving parties may proceed without reviving the suit against the representatives of the deceased, or any other person who has become interested therein by reason of such death, but no order or decree of the court shall bind any person not a party thereto, but in case the complainant shall incline to make the representatives of any deceased party, or any other person interested in consequence of such death as aforesaid, a party to such suit, no bill of revivor or subpoena *ad revivandum*, shall be necessary, but the court may order and direct the suit to stand revived, which order shall be served on the adverse clerk, and unless the representatives of the deceased party, or the parties interested by reason of such death, shall, within eighty days after such service, appear and put in their answer, or signify their disclaimer of the suit, and the matters in controversy therein, the complainant may cause their appearance to be entered, and it

Suits in cer-
tain cases to
abate in part
by reason of
death and
how
K. & R. v. 1. 440
§ 6.

Proceedings
in such cases.

such case the answer of the deceased party shall be deemed the answer of such representatives, or other person, interested by the death of such person: *And further*, in case the complainant shall die, pending any suit, wherein the cause of action shall not survive, his lawful representatives, or other persons, interested by his death, may on affidavit thereof, and on motion in open court, be inserted as complainants in the suit, and be permitted to amend the bill as his interest may require, to which amendment the defendant shall be compellable to answer, and the action shall proceed to issue and trial, as in ordinary cases; and in case any such person shall not in eighty days after such death of the complainant, cause himself to be entered as complainant as aforesaid, then the surviving complainant (if there be any) may insert his name as a defendant in the suit, and may proceed as before directed, where the representatives of a deceased defendant are made parties.

When complainant's representatives may proceed in the suit.

VIII. *And be it further enacted*, That no subpoena or other process for appearance shall issue out of chancery until after the bill is filed, except in cases of bills for injunctions to stay waste, or a suit at law, and no injunction shall be issued in any case until the bill be filed: *And further*, no copy, abstract, or tenor, of any bill in equity, shall go with the *dedimus*, or commission, for taking the defendant's answer.

No process to issue for appearance, till bill filed, except etc.
K. & R. v. 1.441 § 7.
Injunctions, when to issue, etc.

IX. *And be it further enacted*, That if a defendant to any bill in equity shall not appear according to the rules of the said court, in cases where process for that purpose shall issue, whether such process be served or not, and it shall be made to appear by affidavit, to the satisfaction of the court, that the defendant is out of the state, or cannot, upon due enquiry, be found, or doth conceal himself therein, the said court may, by order, direct the defendant to appear at a certain day therein to be named, which order shall, within twenty days thereafter, be published in one or more of the public papers printed in this state, for eight weeks successively, once at least in every week; and if the defendant shall not appear by the time so limited, or within some future time, to be appointed by the court, if necessary, and on proof of the publication of the order as aforesaid, the court may, by order, direct the complainant's bill to be taken *pro confesso*, and make such decree therein as shall be just, and may issue process to compel its performance, either by sequestration of the real and personal estate, and effects of the defendant so absent or concealed as aforesaid, or such part thereof as shall be deemed sufficient to satisfy the complainant's said bill, or by causing possession of the estate or effects demanded by the bill to be delivered to the complainant, and may likewise order the complainant's demands to be paid and satisfied out of the estate and effects so sequestered, according to the true intent and meaning of the decree of the said court, such complainant first giving such security, and in such sum as the court may direct, to abide such order as may be made touching the restitution of such estate and effects, in case the defendant shall afterwards appear and be admitted to defend such suit, upon payment of costs, or otherwise, as the court may direct; but if no such security shall be given, the estate and

Proceedings against a defendant out of the state, or where he cannot be found, etc.
K. & R. v. 1.443 § 2, 3.

Publication of orders.

When bill to be taken *pro confesso*, and proceedings thereupon.

If absent party afterwards appear how to proceed.
K&R. v. L. 443
§ 9.

Decree to be final if no appearance is entered, etc.
in seven years

Proceedings on defendant refusing to answer, etc. as aforesaid, when brought into court.
K&R. v. L. 443
§ 10

Master of the court to sell mortgaged premises under decree of chancery.
K&R. v. L. 443
§ 13
W. v. 4. 615
Sess. 20. c. 167
§ 3.

Proviso.

Court may apply proceeds of sales to instalments not due, and how, etc.
K&R. v. L. 443
§ 14.

effects so sequestered, shall remain under the direction of the court to abide such order as shall be just in the premises: And further, if any absent person against whom any decree is or shall be made, his heirs, devisees, executors, administrators, or assigns, as the case may require, shall, within one year after notice in writing given him, or them, of such decree, or within seven years after such decree, if no such notice in writing hath been given, as aforesaid, appear in court and petition to be heard, touching the matter of the said decree, and shall pay, or give security for payment of such costs as the court shall think reasonable in that behalf, the person so petitioning may be admitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had as if the absent defendant had appeared in due season and no decree had been made, but the said decree shall, after seven years after the making thereof, if not set aside in manner aforesaid, be deemed and adjudged confirmed against such absent defendant, and all persons claiming under him by virtue of any act done subsequent to the commencement of such suit, and at the end of the said seven years the court may make such further order and orders in the premises as shall be just and reasonable.

X. *And be it further enacted*, That if a defendant shall be brought into the said court by writ of *habeas corpus* or other process issuing therefrom, and shall refuse or neglect to enter his appearance according to the rules of the said court, or to appoint a clerk to act on his behalf, then and in such case the said court may appoint a clerk to enter an appearance for such defendant, and such further proceedings may be had in the said cause as if the party had actually appeared.

XI. *And be it further enacted*, That all sales of mortgaged premises under any decree of the said court of chancery shall be made, and deeds executed for the same by one of the masters of the said court, which deeds shall be as valid as if the same had been executed by the mortgagor and mortgagee, and shall be an entire bar against each of them and their heirs respectively, both at law and in equity, and the proceeds of the sale shall be applied to the discharge of the debt due and adjudged by the said court, and the costs awarded by the said court, and the surplus, if any, shall be put out at interest for the benefit of the defendant and his legal representatives or assigns on such security as the court shall approve, and shall be paid to him or them on application to and by order of the said court: *Provided always*, That no greater estate in the premises shall vest in the purchaser upon such sale than would have vested in the mortgagee had the equity of redemption been foreclosed.

XII. *And be it further enacted*, That in cases where a decree for the sale of mortgaged premises shall be made by reason of the non-payment of interest only, or of any portion or instalment on such mortgage, and where a bond or other instrument with a penalty shall have accompanied the same, and in consequence thereof become forfeited, it shall be lawful for the said court to apply the proceeds of the sale of the said premises, as well to the interest, instalment or portion due as towards the

whole or residue of the demand, which hath not become due or payable, and the residue if any, to put out at interest and pay as in the preceding section is directed : *Provided always*, That in case the instalments or portion which have not become due or payable, do not bear interest, then the residue of the monies, after discharging the monies already due and payable besides the costs, shall be put out at interest upon such security and in such manner as the court shall direct, and the same together with the interest arising therefrom shall remain under the direction of the said court as a security to the complainant for the instalments or portion not due, and as the same from time to time become due, the court shall direct the payment thereof, and the overplus, if any, shall remain for the benefit of the defendant, his legal representatives or assigns, to be paid him or them upon application to and by order of the said court : *And provided further*, That if any defendant who shall not have been served with the first process in the cause, shall, before sale, appear and pay such costs to the complainant as the court may award, it shall and may be lawful for the court to stay the said sale, and such proceedings may thereupon be had as if the defendant had been served with the first process, and had regularly appeared thereupon.

Residue how disposed of.

Proviso, where such instalments do not bear interest.

Further proviso, as to staying sale, etc.
K & R v 1, 444.
§ 15

XIII. *And be it further enacted*, That the several examiners in chancery be and they are hereby empowered to administer oaths to witnesses, and also take affidavits to be read in the said court : *And further*, no subpoena to hear judgment shall hereafter issue, but all causes shall be brought on to a hearing under such rules and orders as the said court may from time to time prescribe.

Examiners in chancery may administer oaths, etc.
K and R v 1, 444, sec. 16
No subpoena to hear judgment necessary.

XIV. *And be it further enacted*, That all monies directed to be deposited in the said court, or which may arise from sales by order of the said court, and shall be directed to be brought into court, shall be paid into the banks of New-York or Albany, subject to be drawn out by order of the said court.

K and R v 1, 444, sec. 17
Monies of the court, where to be deposited
K and R v 1, 443, sec. 13

XV. *And be it further enacted*, That the said court may from time to time establish rules for the proceedings in taking a bill *pro confesso*, in every case not otherwise provided for by law ; and also for the proceedings necessary to entitle either party to a decree or order of the said court against the opposite party by default : *Provided*, That nothing herein contained shall affect the proceedings for divorce in cases of adultery, but such proceedings shall be prosecuted according to the statute regulating the same, and the course and usage of the court thereupon.

Court may make rules as to taking bills *pro confesso* in every case.
W. v 3, 20
Secs 26. ch 10 ; 15

Proviso as to bills for divorce.

XVI. *And be it further enacted*, That before any register or assistant register of the said court shall enter upon the duties of their respective offices, they shall respectively, together with two sufficient sureties to be approved of by the chancellor, execute a bond to the people of this state, in the penalty of ten thousand dollars conditioned for the faithful performance of the duties of their respective offices, which bonds shall be filed with the comptroller of this state, and which in case of forfeiture of the condition shall be prosecuted, and the proceeds thereof applied in such manner as the said court shall direct for the indemnity of any persons aggrieved by such forfeiture.

Register and assistant register to give bonds, etc.
W. v 3, 458
Secs. 27. c 58
§ 1

When suitable.

Court may appoint commissioners to take affidavits, etc.
W. v. 3. 400
Sess. 27. c. 68
§ 8

False swearing declared perjury.

Court may appoint a serjeant in Albany and New-York, and his duties.
W. v. 3. 459
Sess. 27. c. 68
§ 3

Register and assistant register to keep an account with the banks.
W. v. 3. 458
Sess. 27. c. 68
§ 2.

Stock, etc. to be assigned to them and how

When and how to exhibit their accounts

In case of their death, etc. the monies, etc. to go to their successors.

Court may invest such monies in stock, etc.

XVII. And be it further enacted, That the said court may from time to time commission and appoint, under its seal and during its pleasure, such and so many competent persons in every county as it shall think fit to take affidavits to be read in chancery, which affidavits shall have the like force and effect as if taken before a master of the said court, and any person who shall commit perjury in any such affidavit, shall incur the same penalties as if the same had been taken before a master.

XVIII. And be it further enacted, That the said court may from time to time and during its pleasure appoint a serjeant of the said court in each of the cities of New-York and Albany, whose duty it shall be to attend the said court while sitting in the city for which such appointment shall be made, and to perform such services in and about the said court, as the said court shall from time to time require.

XIX. And be it further enacted, That an account shall be kept in the name of the register or assistant register, resident in the city of New-York with the bank of New-York, and in the name of the register or assistant register resident in the city of Albany, with the bank of Albany, and in such manner and form as the said court shall direct, concerning all monies deposited in either of the said banks, for by the suitors of the said court in any proceeding depending therein, or that all stock and securities for monies placed out at interest by any of the masters of the said court, by order of the said court, shall be assigned to the said register or assistant register in trust for the benefit of the persons for whose use the same was intended to enure, that all mortgages, stock and other securities taken by order of the said court after the fourth day of April one thousand eight hundred and four, for the benefit of the suitors therein, shall, if appointed to be taken in the name of any officer of the said court, be taken in the name of the register or assistant register, that the said register or assistant register, shall respectively on the first day of every term held in the city in which they are resident exhibit as well their bank accounts, as the account kept by them, to the chancellor for his examination, that after the death or removal of any register or assistant register, all stock, mortgages and other securities vested in him at the time of such death or removal in virtue of any proceedings of the said court, or for the benefit of any of its suitors, shall *eo instanti* be vested in his successor in like manner as if such register or assistant register had respectively been created a corporation sole, with right of succession, and all monies deposited in either of the said banks to the credit of such register or assistant register as such, shall be carried to the account of his or their successor in office, and such banks shall respectively take notice thereof, and transfer such accounts accordingly; that it shall be lawful in the discretion of the chancellor, to cause any of the monies brought into the said court, to be invested in any public stock, and from time to time to be transferred, or disposed of, as the said court shall deem just, or to direct such monies to be placed at interest on approved landed security, and from time to time to make such rules and regulations in and about the premises, for making such deposits, keeping the accounts thereof, for drawing such monies as may be necessary, as from a common

fund, for investing, transferring, or disposing thereof, as the chancellor shall deem just and reasonable, but all proceedings touching the premises, shall be entered in the minutes of the said court.

XX. *And be it further enacted*, That the said court of chancery shall designate from among the masters thereof, one master resident in the city of Albany, one other master resident in the city of New-York, and one other master resident in the county of Oneida, which three masters respectively, during the pleasure of the said court, shall exclusively tax all costs in the said court, and no other master shall be allowed to tax the same; and such designation shall be made by rule or order of the said court as often as it shall deem the same necessary: *Provided*, That this section shall continue in force till the eighteenth day of June, in the year one thousand eight hundred and fourteen, and no longer.

Taxing masters to be appointed, and where.
Sess. 34, c 128
§ 1, 2

XXI. *And be it further enacted*, That wherever proceedings shall be had in the said court, against any absent or concealed defendants, to the end to procure a foreclosure or satisfaction of any mortgage, it shall be lawful for the said court to decree a sale of the mortgaged premises, or such part thereof as shall be sufficient to discharge the said mortgage, besides costs, instead of proceeding to a sequestration in the manner directed by the tenth section of this act; and the proceedings antecedent to such decree, shall be agreeably to the said last mentioned section: *Provided always*, That after a sale and conveyance of such mortgaged premises, by a master of the said court, under the decree or order thereof, such sale and conveyance shall not be affected or prejudiced by the appearance of the party within the one year or seven years specified in the said section, but such sale and conveyance shall be as valid and effectual, as a sale and conveyance under the twelfth section of this act: *Provided further*, That it shall be lawful for the said court, before such sale and conveyance, to receive the appearance of the defendant upon such equitable terms as to the payment of costs, as the court shall deem meet, and thereupon to stay the said sale until the final hearing and determination of the said cause.

Proviso.

Proceedings against absent or concealed mortgagors.
R. and B. v L.
406, § 1.

Proviso.

Further proviso.

XXII. *And be it further enacted*, That the twelfth and thirteenth sections of this act shall and may apply to all cases of sales arising or to arise under the last preceding section of this act.

12th and 13th sections to apply to all sales, etc.

XXIII. *And be it further enacted*, That it shall be lawful within seven years after a decree under the twenty-second section of this act, for the defendant thereto, or his representatives, to file a bill against the complainant or his representatives in the said court, compelling him and them to account for any monies he or they shall have received by virtue of such former decree, over and above the amount (besides costs) justly due and payable on such mortgage, the said decree to the contrary notwithstanding; and the court shall proceed upon such bill according to the equity of the case; but no proceedings upon such bill shall affect or prejudice the former sale and conveyance of the mortgaged premises, or the title derived under the same: *Provided*, Such sale and conveyance shall have been made agreeably to this act.

When & how mortgages liable to account, etc.
R. & B. v L 407
§ 3

Proviso.

Certain sales
by sheriffs
confirmed.
N. Y. v. 4. 515
Laws. 20, c. 107

XXIV. *And be it further enacted,* That all sales and conveyances of mortgaged premises, made by any sheriff of any city or county before the seventh day of April, one thousand eight hundred and six, by virtue of any decree of the said court, or of any writ issuing therefrom, shall be, and the same are hereby confirmed and declared equally valid and effectual in law, as if the same had been made by a master of the said court.

Note.—On the 1st November, 1683, the General Assembly of the Colony, passed a temporary act, entitled “an act to settle courts of justice,” and thereby enacted “that there shall be a *Court of Chancery* within the province, which said court shall have power to hear and determine all matters of equity, and shall be esteemed and accounted the supreme court of this colony.” It was also thereby enacted, “that a *chancellor* be appointed, to hold and keep the said court, assisted with such persons as by the Governor and his council shall be thought meet and convenient.” The governor and council returned the bill with an amendment, declaring “*The Governor and council* to be the Court of Chancery,” with power to the governor “to *depute* in his stead a *chancellor, &c.*”—*vide* original act on file in the Secretary’s office. On the 2d September, 1701, the Governor issued an ordinance, establishing a *Court of Chancery*, and declaring himself *ex officio* chancellor, etc.—*vide* Smith’s Hist. N. York, 98. On the 6th November, 1735, the general assembly *Resolved*, “That a *Court of Chancery* in this province, in the hands, or under the exercise of a governor, without consent in General Assembly, is contrary to law, unwarrantable, and of dangerous consequence to the liberties and properties of the people.”—*vide* Journals of Assembly, page 687. Several struggles were made by the Colonial Assemblies, to destroy this court, but without effect; so that Smith observed, “of all our courts, none has been more obnoxious to the people than this.”—*vide* Smith’s Hist. N. York, 253. This court until the revolution, was in the hands of the Governors of the Colony, when by the Constitution of the state, it was recognized as a court, and a *chancellor* directed to be appointed.—*vide* Constitution, Art. XXV.—The first fee bill established for this court, was by ordinance of the Governor, on the 7th Nov. 1704.—*vide* Br. ed. *appendix*, for ordinance at large, and for the fee bill. The Court of Chancery first organized in this state, March 16, 1778.—*vide* J.&V. v. 1. 23. *English Statutes* concerning this court, and its proceedings in various cases, are 28 Ed. 1. st. 3. c. 5.—18 Ed. 3. st. 5.—31 Ed. 3. st. 1. c. 12.—36 Ed. 3. c. 9.—15 R. 2. c. 6.—4 H. 4. c. 9.—14 & 15 H. 8. c. 2. 8.—27 H. 8. c. 11.—5 El. c. 18.—16 Car. 1. c. 10.—13 Car. 2. st. 1.—1 W.&M. Sess. 1. c. 21.—4 Ann. c. 16.—12 Geo. 1. c. 32, 33.—9 Geo. 2. c. 32.—3 Geo. 2. c. 30.—4 Geo. 2. c. 25, 30.—12 Geo. 2. c. 24.—5 Geo. 3. c. 28.—9 Geo. 3. c. 19, *et seq.*

CHAP. VIII.—(R.L.)

An ACT regulating certain Proceedings in Criminal Cases.

Passed February 25, 1813.

[V. S. v. 2. 499, 771.—J.&V. v. 2. 14, 57, 243, 247.—Gr. v. 1. 303.—Ib. v. 2. 73, 74, 79.—K.&R. v. 1. 259.—W. v. 5. 340.]

Prisoners for
treason or fe-
lony standing
mute or refus-
ing to plead,
deemed to
have pleaded
not guilty.
K. & R. v. 1.
259, § 1
25 H. 8. c. 5
58 Ed. 3. c. 5
10
3 Ed. 1. c. 12
4 Bl. Com. 324
1 Calmes Rep.
37

I. *BE it enacted by the People of the State of New-York, represented in Senate and Assembly,* That in all cases of treason or felony where the party indicted shall, on being arraigned, obstinately stand mute or refuse to plead and be tried in due course of law, such obstinately standing mute or refusal to plead and be tried as aforesaid, shall be adjudged to be a denial of the facts charged in the indictment; and the trial shall thereupon proceed in like manner, and the record shall be in the same form, and the same judgment shall be given against the said party, if found guilty, as if such party, on being arraigned, had pleaded not guilty.

II. *And be it further enacted*, That it shall not be necessary, on the arraignment or trial of any person for treason or felony, to ask the prisoner how he will be tried, nor to charge the jury to enquire whether the prisoner fled or not, or what goods or chattels, lands and tenements the prisoner at any time had.

III. *And be it further enacted*, That no conviction or attainder of any person, for any offence specified in the act, entitled "an act declaring the punishment of certain crimes," except treason, shall hereafter work a forfeiture of goods, chattels, lands, tenements or hereditaments, or of any right therein; and that all forfeitures to the people of this state, in the nature of deodands and in cases of suicide, and where any person shall flee from justice, shall be and hereby are abolished.

IV. *And be it further enacted*, That the privilege or benefit of clergy, formerly allowed in criminal cases, shall be forever abolished.*

V. *And be it further enacted*, That where any person hereafter shall be feloniously stricken or poisoned in one county, and die of the same stroke or poisoning in another county, then an indictment thereof, found by jurors of the county where the death shall happen, whether it shall be found before the coroner, upon the sight of such dead body, or before the justices of the peace, or the justices or commissioners, who shall have authority to enquire of such offence, shall be as valid in law as if the stroke or poisoning had been given in the same county where the party shall die: *And further*, That the courts of oyer and terminer and gaol delivery, in the same county where such indictment at any time hereafter shall be taken, and the justices of the supreme court when such indictment shall be taken or removed before them, shall proceed upon the same in all points as they ought to do in case such felonious stroke or poisoning, and death thereby ensuing, had happened in one and the same county: *And further*, That when any murder or felony shall be committed in one county, and any other person shall be accessory in any manner to any such murder or felony in any other county, then an indictment found against such accessory for the same, at any court of oyer and terminer and gaol delivery or general sessions of the peace in the county where such offence of accessory shall be committed, shall be as good and effectual as if the said principal offence had been committed within the same county where the same indictment against such accessory shall be found; and the courts of oyer and terminer and gaol delivery in the county where the offence of any such accessory so indicted shall be committed, shall, upon a certificate, that the principal is attainted, convicted or otherwise discharged of the principal felony, to be given under the hand and seal of the clerk who has the custody of the records

Ancient form of arraignment, and of charging the jury dispensed with
K&R. v. 1. 259. § 2
4 Bl. Com. 329
Forfeitures of estate, except for treason, abolished
K&R. v. 1. 259 § 3
34 Ed. 3. c. 12:
46 Ed. 3.
25 Ed. 3. st. 5. c. 2.
1 R. 3. c. 3.
26 H. 8. c. 18
34 Ed. 3. c. 12
4 Bl. Com. 384
Benefit of Clergy abolished
K&R. v. 1. 259 § 4

A party stricken or poisoned in one county, and dying in another, offender may be indicted in the latter county
K&R. v. 1. 259 § 5
25 Ed. 3. c. 24

Proceedings as to accessories in such cases or in any other felony
25 Ed. 3. c. 24

[* The rise and progress of the claim "of the benefit of clergy" is ably traced and delineated in 4 Bl. Com. c. 28. p. 365.—It was first abolished in this state February 21, 1788—*vide* Gr. v. 2. 73—*vide* also, on this subject, the English statutes, 4 H. 8. c. 13.—28 H. 8. c. 1.—32 H. 8. c. 3.—1 Ed. 6. c. 12.—18 El. c. 7.—21 Jac. 1. c. 6.—3 and 4 W.&M. c. 9.—4 and 5 W.&M. c. 24.—10 and 11 W. 3. c. 23.—5 Ann. c. 6.—4 Geo. 1. c. 11.—6 Geo. 1. c. 23.—19 Geo. 3. c. 74.—16 Geo. 2. c. 15.—8 Geo. 3. c. 74.—25 Ed. 3. st. 3. c. 4.—28 H. 8. c. 15.—8 El. c. 4.]

of the same, and which certificate such clerk is hereby required to give on application in writing from either of the judges of the said courts, proceed to try every such accessory in the county where the offence of such accessory was committed, in like manner as if the principal offence and accessory had been committed in such county, and thereupon to give judgment and award execution according to law.

Accessories liable, though principal be pardoned before attainder
 K&R. v. l. 260
 § 6
 1 Ann. st. 2. c.
 40 Geo. 2. c. 39

VI. *And be it further enacted*, That if any principal felon shall be convicted of any felony, it shall be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding any such principal felon shall be pardoned or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if he be convicted, as he should have suffered if the principal had been attainted: *And further*, That it shall be lawful to prosecute and punish every person buying or receiving any stolen goods, knowing the same to be stolen, as for a misdemeanor, although the principal felon be not convicted of the said felony, which shall exempt the offender from being punished as accessory to such felony after the fact if the principal shall be afterwards convicted.

Receivers of stolen goods punishable as for a misdemeanor though principal be not convicted
 24 Geo. 3. c. 54

Justices of the Sup. Court may send felons to their proper counties to be tried &c
 K&R. v. l. 261
 § 7
 6 H. 2. c. 6

VII. *And be it further enacted*, That the justices of the supreme court shall have full power, by their discretion, to remand and send down, as well the bodies of all felons brought or removed into the supreme court as the indictments against such felons, into the said counties where the same felonies were or shall have been committed, and to command all justices of gaol delivery, justices of the peace, and all other justices and commissioners, having authority to hear and determine the same felonies, to proceed and determine upon all the aforesaid felonies and indictments so removed according to law, in such manner as the same justices of gaol delivery, justices of the peace or commissioners, or any of them might have done if the said prisoners or indictments had never been brought in the supreme court.

Foreign pleas how to be tried
 K&R. v. l. 261
 § 8
 4 H. 2. c. 2
 25 H. 2. c. 2

VIII. *And be it further enacted*, That all manner of foreign pleas triable by the country, hereafter to be pleaded by any person arraigned upon any indictment for any treason or felony, shall be forthwith tried before the same justices before whom such person shall be arraigned, and by the same jurors of the same county that shall try the treason or felony whereof he, she or they shall be so arraigned, without any further delay, in whatsoever county or place the matter of the same pleas be alleged.

Peremptory challenges not to exceed 30
 K&R. v. l. 261
 § 9
 28 H. 2. c. 24
 28 H. 1. c. 1—1
 No indictor to be on the petit jury.
 K&R. v. l. 261
 § 10
 25 Ed. 3. st. 5. c. 3.
 Witnesses allowed to persons tried for

IX. *And be it further enacted*, That every person, arraigned for any crime punishable with death or with imprisonment for life, shall be admitted on his trial to a peremptory challenge of twenty jurors and no more.

Ed. 6. c. 12.—4 Bl. Com. 313.—1 Ph&M. c. 10.—1 Caines' Rep. 37.

X. *And be it further enacted*, That no indictor of any person for any crime or offence whatsoever, shall be put upon the inquest for the trial of such person, if he be challenged for that cause by the person so indicted.

XI. *And be it further enacted*, That every person who shall be arraigned or tried for any felony, shall be admitted to make

Any proof that he or she can produce by lawful witnesses, who shall then be upon oath, for his or her defence in that behalf, and shall have the like process of the court where he or she shall be tried, to compel his or her witnesses to appear for him or her at such trial, as is usually granted to compel witnesses to appear against him or her.

XII. *And be it further enacted*, That the clerks of the courts of common pleas and general sessions of the peace of the respective counties in this state, are hereby authorised, upon application to them in the vacation as well as sitting of the said court, to issue writs of subpoena, under the seal of the court of common pleas, for such witnesses, as any defendant, prisoner or other person, proceeded against in any court of oyer and terminer and general gaol delivery, or general sessions of the peace, shall require, which writs shall be tested of the day of the issue thereof, and returnable of any day of the sitting of said court; and to every disobedience to the command of every such subpoena, shall be attached the like penalty, and remedy for damages, as is by law provided in the like cases in any civil cause; and the clerk of the courts of oyer and terminer and gaol delivery and general sessions of the peace held in and for the city and county of New-York, is hereby invested with the like power; and for every disobedience of the command of any subpoena issued by him, the like penalty, and remedy for damages, above mentioned, shall be incurred.

XIII. *And it be further enacted*, That from henceforth the words "with force and arms," or any such words, shall not, of necessity, be put in any inquisition or indictment of treason, felony, trespass or any other offence; and that no party, being hereafter indicted of any offence, shall take any advantage by writ of error, plea or otherwise, to annul or avoid any such inquisition or indictment, because the words "with force and arms," or any such like words, are not put into the said inquisition or indictment.

XIV. *And be it further enacted*, That if any felon do rob, or take away any money, goods or chattels, from any person, and the said felon be thereof indicted and found guilty, or otherwise attainted by reason of evidence given by the owner of the said money, goods or chattels, bills of exchange, bills or promissory notes for the payment of money, so robbed or taken away, or by any other, by his procurement, then such owner shall be restored to his money, goods or chattels, bills of exchange, bills or promissory notes for the payment of money; and the court before whom the felon shall be so convicted, may award writs of restitution for the said money, goods or chattels.

XV. *And be it further enacted*, That every person who shall be lawfully committed to the common gaol in any city or county of this state, for any crime or misdemeanor, having means there-to, shall bear his or her own reasonable charges for conveying him or her to the said gaol, and the charges also of such as shall be appointed to guard him or her to the said gaol, and shall guard him or her thither. And if any such person so to be committed

felony, and process to bring them in. K&R. v. l. 261 § 11
31 EL. c. 4
4 Jac. 1. c. 1
7 W. 3. c. 3
1 Ann. st. 2, c. 9.
4 Bl. Com. 359
Subpoenas for prisoners how obtained and issued. W. v. s. 340
Sec. 31. c. 153
§ 23
References *supra*

The words "with force and arms" not necessary in indictments. K&R. v. l. 261 § 13
37 H. 8. c. 8
Party robbed to be restored to his goods on prosecuting the felon. K&R. v. l. 262 § 13
21 H. 8. c. 11

Persons committed to bear the charge thereof if able K&R. v. l. 262 § 14
3 Jac. 1. c. 10
et supra

How receive
fines.

If unable,
county or city
to pay them.

Expenses of
prosecutor
and witnesses
in criminal
cases when
and how paid
by the county
K. & H. v. L.
263 § 15
W v S. 340
Sess. 31. c 155
§ 24
1 Calmes' Rep.
50.

Witnesses
from a foreign
state.

Poor persons
bound by re-
cognizance
as witnesses
how paid.

as aforesaid, shall refuse at the time of his or her commitment and sending to the said gaol, to defray the said charges, or shall not then pay or bear the same, then any justice of the peace of the county shall, by writing under his hand and seal, after conviction of the person so committed, give warrant to any constable of the town where such person so committed shall inhabit, or where he shall have any goods within the same city or county, to levy, by distress and sale of the goods and chattels of the said person so to be committed, so much money as, by the discretion of the said justice, shall pay the charges of his or her conveying and sending to gaol. And when any person, not having goods or money within the city or county where he or she shall be taken, sufficient to bear the charges of himself or herself, and of those who convey him or her, is lawfully committed to gaol, then, on application by any constable or other officer who conveyed him or her to gaol as aforesaid, to any justice of the peace for the same city or county, the justice shall, upon oath, examine into and ascertain the reasonable allowances to be made to such constable or other officer, both for his expenses and trouble; the said allowance for trouble not to exceed six cents for each mile that he shall travel, to convey the said offender to gaol as aforesaid: and the said justice shall forthwith, without fee or reward, by warrant under his hand and seal, order the treasurer of the city or county to pay the same, which the said treasurer is hereby required to do as soon as he receives such warrant, and shall have monies in his hands.

XVI. *And be it further enacted*, That it shall be in the power of the court, before whom any person shall have been tried and convicted of any larceny or other felony, at the prayer of the prosecutor, and on consideration of his circumstances, in open court, to order the treasurer of the city or county in which the offence shall have been committed, to pay unto such prosecutor such sum of money as to the same court shall seem reasonable, not exceeding the expenses which it shall appear to the court the prosecutor was put unto in carrying on such prosecution, and making him a reasonable allowance for his time and trouble therein. That when any person from a foreign state shall, at the request of the public prosecutor, attend as a witness to give evidence in any criminal prosecution, it shall be the duty of the court at which such witness shall attend, to order the treasurer of the city or county in which the offence shall have been committed, to pay unto such witness such sum of money as to the same court shall appear reasonable for his time, trouble and expense. And that when any poor person shall appear on recognizance, in any court, to give evidence against another, accused of any larceny or other felony, it shall be in the power of the court, at the prayer and on the oath of such person, and on consideration of his circumstances, in open court, to order the treasurer of the city or county in which the offence shall have been committed, to pay such sum of money as to the said court shall seem reasonable, for his time, trouble and expense, which order, in either case, the clerk of such court is hereby directed forthwith to make out and deliver to such prosecutor, upon being paid

for the same the sum of twelve and an half cents, and no more; and to such poor witness, without fee or reward, and the treasurer of such city or county is hereby required, upon sight of every such order, or as soon after as he shall have monies sufficient in his hands, forthwith to pay to such prosecutor or witness, or other person authorised to receive the same, such sum of money so ordered to be paid as aforesaid.

Treasurer of the county to pay the same on order of the court.

XVII. *And be it further enacted*, That the treasurer of each city and county shall be allowed in his accounts all such sums as he shall pay upon any such order as aforesaid, which sums shall be considered as part of the contingent charges of such city or county; and that the several treasurers may be enabled to comply with such orders, the supervisors of the several counties are hereby required to cause a sum, sufficient for the purposes aforesaid, to be raised, levied and collected, in their respective counties yearly, in the same manner as the contingent charges of the same counties are to be raised, levied and collected.

Treasurers to be allowed such sums in their accounts K. and R. v. l. 263. § 16. References *supra*.

XVIII. *And be it further enacted*, That when any person shall be convicted of, and fined for any crime or misdemeanor, the court may, in their discretion, allow such expenses to witnesses and prosecutors, out of the same fine as such court shall judge reasonable, not exceeding the sum of twenty-five dollars, and shall cause an entry thereof to be made in the minutes of the court; and the clerk in the estreat thereof shall mention the same, in order that the court of exchequer may know how much of the said fine is to be answered to the people of this state; and when such fine is paid to the sheriff or other officer, he shall pay such expenses so allowed out of the same.

On party's being fined on conviction, witnesses, etc. may be paid thereout a certain sum. K. and R. v. l. 263. § 17. References *supra*.

XIX. *And be it further enacted*, That in all cases where a person shall, on the complaint of another, be bound by recognizance to appear, or shall, for want of surety, be committed, or shall be indicted for an assault and battery, or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done riotously or with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy by civil action, if the party complaining shall appear before the magistrate, who may have taken the recognizance, or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate, in his discretion, to discharge the recognizance, or supersede the commitment, and also to discharge the recognizance which may have been taken for the appearance of witnesses in such case, or for the court also in their discretion to order a *noli prosequi* to be entered on the indictment, as the case may require upon payment of costs: *Provided always*, That this act shall not extend to any assault and battery, or other misdemeanor, committed by, or on any officer or minister of justice.

In certain cases of assault and battery, and misdemeanors parties may settle among themselves K. and R. v. l. 264. § 18. [First adopted Feb. 4, 1798. Vide *Lex And.* 276.—*Session* 21. ch. 21.]

XX. *And be it further enacted*, That in all cases of felony, heretofore committed, or which may hereafter be committed, it shall and may be lawful for any person or persons, injured or aggrieved by such felony, to have and maintain his, her, or their action, against the person or persons guilty of such felony, in like

Proviso.

Civil remedy not merged in the felony. K. and R. v. l. 264. § 19.

1 Leon. 178.
2 Inst. 714.
Kel. 47.
5 D. and E. 178
31 H. 8 c. 11.
Appeals of felony abolished
K. and R. v. L.
304. § 30.

manner as if the offence committed had not been felonious; and in no case whatever shall the right of action of the party injured be deemed, taken, or adjudged, to be merged in the felony, or in any manner affected thereby.

XXI. And be it further enacted, That all appeals of felony shall be and hereby are abolished.

[NOTE—*Appeals* were not permitted after a party's acquittal. *Vide* Gr. v. 3. 292. March 26. 1796, and eventually were wholly abolished by the revised laws of K. & R. *Vide* K. & R. v. 1. 264. § 20.—As to the *English law* on the subject.—*Vide* M. C. 9 H. 3. c. 34.—6 Ed. 1. c. 9.—13 Ed. 1. c. 12.—28 Ed. 1. st. 2.—1 H. 4. c. 14.—7 H. 3. c. 1.—8 H. 6. c. 10.—10 H. 6. c. 6.—18 H. 6. c. 12.—3 H. 7. c. 1.—2 & 3 Ed. 6. c. 24.—5 Geo. 1. c. 13.—4 Bl. Com. 312, 314, 424.]

[Cases as to criminals, &c. 2 Caines' Rep. 100, 304, 213.—1 John. ca. 179, 104, 336. 2 Ib. 408, 342, 301.—3 Ib. 265, 299, 334.—1 John. Rep. 320.—2 Ib. 477.—3 Ib. 449.—4 Ib. 296, 52, 424, 296.—5 Ib. 236.—6 Ib. 103, 320.—8 Ib. 290.—9 Ib. 70.]

CHAP. L.—(R.L.)

An ACT concerning Judgments and Executions.

Passed April 2, 1813.

[Charter, etc. of Oct. 26, 1683.—J. & V. v. 1. 277. § 5.—Ib. v. 2. 113.—Gr. v. 1. 407.—K. & R. v. 1. 388.]

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That all and singular the lands,* tenements, and real estate, of every person against whom any judgment shall have been obtained in any court of record, for any debt, damages, costs or other sum of money, shall be subject to be sold upon execution to be issued upon such judgment, and the said judgment shall be a lien on such lands, tenements, and real estate: *Provided,* That no judgment heretofore rendered, shall be or remain a lien on any real estate, or in any manner incumber the same against *bona fide* purchasers, or subsequent incumbrances by mortgage, judgment or otherwise, for any longer time than ten years from and after the ninth day of April, one thousand eight hundred and eleven; and that all judgments hereafter to be rendered, shall cease to be a lien or incumbrance on any real estate as against *bona fide* purchasers, or subsequent incumbrances by mortgage, judgment or otherwise, from and after ten years from the time the same shall be docketed, any law, usage or custom to the contrary notwithstanding: *Provided nevertheless,* That in case the party in whose favor judgment heretofore has been, or hereafter shall be entered, shall be restrained by injunction out of the court of chancery from issuing execution,

Real estate liable to be sold on execution.
K. and R. v. 1. 388.
5 Geo. 2. c. 7.
4 John. Rep. 41.—1 Caines' ca. in error, 47.
St. de Merc. 11.
Ed. 1. & 13.
Ed. 1. st. 3.
St. Westm. 13.
Ed. 1. st. 1. c. 18.
27 Ed. 3. c. 9.
30 Car. 2. c. 3.
4 and 5 W. and M. c. 20.—8 John. Rep. 333, 347.
3 Bl. com. 418.
3 Co. 11.—2 Inst. 394.
Sess. 34 c. 288.
§ 8.—S. 438.
4 John. Rep. 316.
Further provided, excluding from the 10 years the time a party may be stayed by

[*By the *Charter of Rights, &c.* of the 26th October, 1683, it was declared that lands could not be sold on execution, but *vide* 5 Geo. 2. c. 7. passed in 1732, which declared that after the 29th September, 1732, the houses, lands, negroes and other hereditaments, and real estates situate in any of the plantations, &c. "*shall be assets*" for the payment of debts, and may be seized, etc. "towards the satisfaction of such debts, duties and demands, and in like manner as *personal estates*, in any of the said plantations respectively are seized, etc. for the satisfaction of debts."—Section 4.]

Side Vol. 2. page 545 - the act for relief of im-
prisoned Debtors not to extend to a plaintiff
imprisoned for costs &c -

"Act - addition 19th N. S." 12th April 1842 }
See 5 N. R. L. 1876 }.

[4th Mr 6 redemption: &c...]

Further amendment, - 1st lien on - 1st pre-
sumption of payment - 220th - 5 N. R. L. 267^c.

the time which he shall be so restrained, shall not be deemed or considered as any part of ten years. injunction out of chancery.

II. *And be it further enacted*, That every judge, or officer of any court of record, who shall sign any judgment, shall at the time of signing the same, without any fee, set down the day and year of his signing the same judgment, upon the margin of the roll or record where the same judgment shall be entered; and that the clerks of the said respective courts, shall mark upon the back of every roll or judgment filed in their respective offices, the time of filing the same: *And further*, That no judgment shall affect any lands or tenements, as to purchasers or mortgagees, or have any preference against heirs, executors, or administrators, in their administration of their ancestors, testators or intestate's estates, but from the time of the actual filing of the roll or record of the same judgment in their respective offices, after the same shall have been signed as aforesaid. Time of signing judgment to be noted on the margin. K. & R. v. 1. 388 § 2
Clerk to mark the time of filing on the roll
30 Car. 2. c. 3
4 & 5 W. & M. c. 3
30—50 W. & M. c. 13
4 John. Rep. 216
7 Vin. Abr. 53,
54—2 Eq. ca. Abr. 684—
Cowp. 280, 719,

III. *And be it further enacted*, That the clerks of the several courts of record in this state shall, during every term or court, or within six days thereafter, make and put into an alphabetical docket, by the name of the party against whom any judgment shall be entered, a particular entry of all final judgments for debt or damages entered in the said courts respectively of such term, or at the court preceding, which shall contain the names of the parties, their places of abode, and title, trade or profession, if any such be in the record of such judgment, and the debts, damages and costs recovered thereby; and the said respective dockets, shall be fairly put into and kept in books in the office of said clerks respectively, which may be searched by all persons at reasonable times, and every clerk, for every term or court in which he shall omit to do his duty in the premises, shall forfeit the sum of two hundred and fifty dollars, the one moiety thereof to the party grieved, and the other moiety to the person who will sue for the same; to be recovered with costs of suit in any court of record by action of debt or by information: *And further*, That no judgment not docketed and entered in the books as aforesaid, shall affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors or administrators, in their administration of their ancestors, testators or intestate's estates. Clerks to docket all judgments.
K. & R. v. 1. 388, sec. 3
4 & 5 W. & M. c. 20—29 Car. 2. c. 3
References ut supra
Judgment not docketed, not to affect purchasers.
4 N. & W. & M. c. 20, sec. 3
vide references to sec. 2

IV. *And be it further enacted*, That no recognizance hereafter taken, shall bind any lands, tenements or hereditaments in the hands of any purchaser or mortgagee, bona fide, and for valuable considerations. Recognizances not to bind land against purchasers.
K. & R. v. 1. 389 sec. 4
30 Car. 2. c. 3
No bond and warrant of attorney to confess judgment to be contained in the same instrument.
K. & R. v. 1. 389, sec. 6
And no judgment on confession shall be entered, etc.

V. *And be it further enacted*, That no judgment shall be entered upon any bond or other contract in writing hereafter to be made, upon the confession of any attorney, by virtue of any authority whatsoever contained in the same instrument, paper or parchment with such bond or contract; and no judgment shall be entered upon any confession taken out of court before any judge of any court of common pleas, or mayor's court; and if any judgment shall be so entered, the same shall be void.

VI. *And be it further enacted*, That no writ of execution shall bind the property of the goods of any person against whom such Execution to bind goods from delivery

to sheriff.
K & R. v. 1.
359, sec. 7
20 (ar. 2. c 3
sec. 16
3 John. Rep.
446—2 Tidd's
pr. 909, of sec.
20 Car. 2. c 3
sec. 16
Sheriff to en-
dorse the time
of delivery.
Execution
may issue a-
gainst the bo-
dy or estate
of the debtor.
K. and R. v
2. 390, sec. 3
References
at supra.

Secs. 34, c 237

In cases where
special bail is
filed, no exe-
cution to is-
sue against the
body, until the
21 (d. 1.—13
Ed. 1. st. 3

Body & proper
estate of
an heir, etc.
not liable to
execution, un-
less made so
by false plead-
ing, etc.
K & R. v. 1, 390
sec. 8

Non-age of
heir not to sus-
pend the re-
medy of the
plaintiff on his
judgment, etc.
Secs. 34, c 237
41

Non-age of
heir or devisee
does not in any
case suspend
any action for
debt, etc. but
execution af-
ter judgment
is suspended
one year—vide
6th section of

Execution
against goods
and chattels,
lands and te-
nements.

writ shall be issued, but from the time that such writ shall be delivered to the sheriff, under sheriff, coroner or other officer, to be executed; and for the better manifestation of the said time, the sheriff, under sheriff, coroners and other officers, their deputies and agents, shall upon the receipt of every such writ, without fee for doing the same, endorse upon the back thereof, the day of the month and year when he or they received the same.

VII. *And be it further enacted*, That where any debt shall be recovered or acknowledged, or damages adjudged in any court of record, it shall be lawful for the party in whose favor such judgment shall be given, to have an execution against the body of such debtor, or a writ commanding the sheriff, or other proper officer, to cause such debt and damages to be made of the goods and chattels of the party chargeable with such debt in the usual form, or of the goods and chattels, lands and tenements, of the person chargeable with such debt, in the form herein after mentioned: *Provided however*, That no execution shall hereafter issue upon any judgment, rendered as aforesaid, in any action in which special bail shall have been filed, against the body of any defendant, unless he is already in prison on execution, until an execution against the goods and chattels, lands and tenements of such defendant shall have been issued upon such judgment to the proper officer of the county in which the *capias ad respondendum* in such action was served, and such officer shall have returned thereon, that no goods or chattels, lands or tenements, could be found, whereon to levy, the whole sum directed to be levied by such execution: *And further*, That no execution shall be issued against the body or the proper goods and chattels, lands and tenements, of any heir, devisee, executor or administrator, unless such person shall have made his estate liable to the same debt by false pleading or otherwise.

VIII. *And be it further enacted*, That where any judgment hath been, or shall be recovered or acknowledged, or damages adjudged, in any court of record in this state, and such judgment shall have been perfected so as to become a lien on the lands and tenements of the defendant, in every such case, if the defendant happens to die before execution shall have been issued thereon, the remedy of the person in whose favor the said judgment shall have been rendered or acknowledged, shall not be suspended by reason of the non-age of any heir or heirs of any such defendant; but no execution shall be issued upon such judgment until the expiration of one year after the death of such defendant.

the act "for the relief of creditors against heirs and devisees," passed April 10, 1813, p. 316.]

IX. *And be it further enacted*, That in every writ of execution hereafter to be issued against lands and tenements, the sheriff or other officer to whom such writ shall be directed, shall be commanded, that of the goods and chattels* of the person or per-

* [Wheat, &c. growing is a "chattel," subject to execution as such. 1 Salk. 368.—1 B & P. 397.—6 East 604.—Rob. on frauds, 126.—2 John. Rep. 422.—No levy can be made on execution after return day. 4 John. Rep. 450.—Where monies are collected on execution, whether they may be paid over to satisfy an execution against the plaintiff. 5 John. Rep. 163.—Sale on execution may be adjourned. 5 John. Rep. 345.—Attorney to the execution personally liable to the sheriff for poundage, &c. 5 John. Rep. 252. As to goods pledged being taken in execution, by 3 Bulst. 17.—Rath and library shares cannot be seized in execution. 9 John. Rep. 96.]

sons against whom such execution shall issue in his county, he cause to be made the debt, damages and costs, or sum of money in such execution specified; and if sufficient goods and chattels of such person or persons cannot be found in his county, that then he cause the said debt, damages and costs or sum of money, to be made of the lands* and tenements whereof such person or persons was or were seized, on the day when the same lands became liable to such debt, damages or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be; but when any such execution shall be issued against any person or persons as ter-tenants, or as heirs or devisees of any person deceased, unless they shall have made their estate liable by false pleading or otherwise, such writ shall only command the sheriff or other officer to whom the same shall be directed, that of the lands and tenements whereof the ancestor, testator or person deceased, was seized on the day the same lands became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages and costs, or sum of money, in the same writ specified.

R. & R. v. 1.
388. § 9.
St. Western. 2.
13 Ed. 1. st. 1.
c. 12.

Execution
against ter-
tenants, heirs
and devisees.

X. *And be it further enacted*, That whenever any execution against the lands and tenements of any defendant or defendants, hath been or hereafter shall be issued, and delivered to any sheriff within this state, and such sheriff shall happen to die before the execution is satisfied, in every such case it shall and may be lawful for the under-sheriff of the sheriff so dying, to execute every such writ of execution, in like manner as the sheriff might do if in full life; and on sale of any real estate of any defendant or defendants, to execute in his own name a deed of the premises sold to any purchaser or purchasers, his or their heirs and assigns forever.

Under sheriff
may, in case of
sheriff's death,
execute any
writ of execution.
Bess. 34. c. 230
§ 7

XI. *And be it further enacted*, That where lands or tenements in the hands of several persons shall be liable to satisfy any judgment or debt of record, and the whole, or more than a due proportion, shall be paid by, or levied upon, the lands of any one or more of them, the person or persons so agrieved, his or their executors or administrators, may have a writ out of chancery, setting forth his or their grievance, directed to the justices of the supreme court, commanding them to hear the complaint, and to do justice to the parties; and the justices of the supreme court shall thereupon cause the party or parties against whom such complaint shall be made, to be warned to be before them at a certain day, to shew, if he or they have any thing to say, why his or their lands should not be charged with a due proportion of the monies so paid or levied; and if he or they do not come at the day, or do come and can say nothing why his or their lands should not be charged with a due proportion of the monies so paid or levied, then the sheriff of each county in which such lands and tenements so chargeable shall be situated, shall be

Remedy
where several
are bound by a
judgment and
one pays more
than his share
R. & R. v. 1, 390
§ 10
Writ to issue
out of chancery.
16 & 17 Car. 2.
c. 5.
22 & 23 Car. 2.
c. 2.

Parties to be
warned.

Sheriff com-
manded to en-
quire of the
value of the
lands bound

* [Lands mortgaged cannot be sold on execution against the mortgagee before estate has become absolute at law. 4 John Rep. 41. But the equity of redemption may, on execution against mortgagor. 1 Cases' Cases in Error, 47.]

And to return
inquisition,

And each de-
fendant's
share how
levied.
Remedy
where purcha-
ser upon exe-
cution is evic-
ted.

Writ out of
chancery.

To shew why
party should
not be restor-
ed to his mo-
ney.

New execu-
tion may issue
where defend-
ant die in exe-
cution.
K&R. v. l. 392
§ 11
21 Jac. 1. c. 24.

But not to af-
fect certain
sales.

commanded, that by the oath of twelve good and lawful men of his county, he diligently inquire what was the true value of the lands and tenements in the hands of each of the parties respectively in his county, so chargeable at the time they became chargeable as aforesaid, and that he send the inquisition which he shall take thereof before the same justices, at a certain day, under his seal, and the seals of those by whose oath he shall take such inquisition; and when the value of the whole lands and tenements so chargeable shall be found, the justices shall apportion the money so paid or levied, together with the plaintiff's damages and costs of suit, among the several holders of the said lands and tenements so chargeable, according to equity and justice; and shall cause so much as each person ought to pay, to be levied of the said lands and tenements so held by him or her, and to be paid to the plaintiff: *And further*, That if any purchaser of any lands or tenements upon any execution, or his heirs or assigns, shall be evicted on account of any irregularity in the proceedings, or want of title in the person or persons against whom such execution issued, or by reason of any prior incumbrance, in every such case the person or persons so evicted, his or their executors or administrators, may have a writ out of chancery, setting forth his or their grievance, directed to the justices of the supreme court, commanding them to hear the complaint, and to do justice to the parties; and the justices of the supreme court shall thereupon cause, as well the party or parties at whose suit, or for whose benefit the same lands and tenements were sold, as the party against whom the execution issued, or their respective heirs, devisees, executors or administrators, to be warned to be before them, at a certain day, to shew, if they or either of them have any thing to say, why the plaintiff should not be restored to the monies paid for the said lands and tenements; and if they do not come at the day, or do come and say nothing why the plaintiff should not have restitution of the said monies, the plaintiff shall have judgment and execution for the same, together with his costs of suit, against him or them who ought to repay the same; and the party in whose favor such former judgment was had, or his heirs, devisees, executors or administrators, who may be charged by such judgment of restitution, shall thereupon have such further judgment and execution as justice shall require.

XII. *And be it further enacted*, That the party at whose suit any person shall stand charged in execution for any debt or damages recovered, his executors or administrators may, after the death of the said person so charged and dying in execution, have new execution against the goods and chattels, lands and tenements, or any of them, of the person so deceased, in the same manner as such party might have had if the person so deceased had never been charged in execution; but no such new execution shall be against any lands, tenements or hereditaments, which shall, at any time after the judgment against such person so dying, and by reason whereof such person so dying was charged in execution, have been sold bona fide by such person for the payment of any of his creditors, and the money which shall be paid for the lands so sold, either paid, or secured to be paid, to

any of his creditors, with their privity and consent, in discharge of his debts, or of some part thereof; nor against any lands, tenements or hereditaments, of any such person so dying in execution, which shall have been sold by reason of any other judgment against such person.

XIII. *And be it further enacted,* That no lands or tenements shall be sold by virtue of any execution aforesaid, unless such sale be at public vendue, and between the hours of nine in the morning, and the setting of the sun of the same day, nor unless the time and place of holding such sale, shall have been previously advertised, publicly for the space of six weeks successively, by nailing up a printed or written notice thereof in at least three of the most public places within the town where such lands or tenements shall be sold; and also by causing a similar notice thereof to be printed in one of the public newspapers if any such paper there be, within the county wherein such lands and tenements shall be sold; and if such lands and tenements are not occupied by the defendant or defendants in such execution named, or some one of them, or by some person holding the same as tenant or purchaser, under such defendant or defendants, and are situate in any county in the eastern or western district of this state in which no newspaper is printed, then unless the notice of the sale shall have been published in the newspaper printed by the printer to the state, in the city of Albany; in all which notices the lands or tenements to be sold shall be described with common certainty by setting forth the number of the lot and name of the township in which the same are situate, if any they have, if not by some other appropriate description; and if any sheriff shall sell any lands or tenements by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice, or if any person shall take down or deface any such notice previous to the day of sale therein specified, unless upon satisfaction of the judgment on which such execution issued, or with the consent of the plaintiff therein, the sheriff so offending, shall for every such offence forfeit and pay the sum of one thousand two hundred and fifty dollars; and every person so offending by taking down or defacing such notice shall forfeit and pay the sum of thirty-seven dollars and fifty cents, to be respectively recovered with costs of suit by any person who will sue for the same; which sum or sums when recovered, shall be for the use of the person so prosecuting for the same: *Provided however,* That no such offence shall be deemed to affect the validity of any such sale.

XIV. *And be it further enacted,* That no goods or chattels shall be sold by virtue of any execution aforesaid unless previous notice of such sale shall have been given for at least six days successively by putting up written or printed notices thereof in three of the most public places within the town where such sale is to be, specifying the time and place when and where such goods and chattels are to be sold; and any person or persons who shall take down or deface any such advertisement, shall incur the same penalties as are herein before imposed for taking down and defacing notices of the sale of lands and tenements.

Lands and tenements on execution to be sold at vendue after notice etc. K&R. v. 1, 392 § 13 W. v. 5 367 Sess. 31, c. 200 Notice how given and advertised.

Notice required of lands sold on execution lying in the eastern and western districts.

Penalty on sheriff for selling contrary to this act.

Penalty on any person defacing or taking down notice of sale, etc.

Proviso, sale not to be affected.

Goods and chattels to be sold on execution, after six days notice. W. v. 3, 462 Sess. 27, c. 108 Notice required.

Penalty for defacing or taking down same.

Certain number of sheep &c swine, a cow, bedding, etc. exempt from execution.

Sess. 33. c 193 § 38

Sheriff, deputies, et. not to become purchasers on sales on execution.

K and R. v 1 3p3. n c 13

Such purchases void.

Judge of common pleas may take satisfaction of judgments in that court or in sup. court.

Sess. 34. c 196 § 3

XV. And be it further enacted, That all sheep to the number of twenty owned by any person being a householder, shall be exempt from execution for five years from and after the fifth day of April, one thousand eight hundred and ten, any law to the contrary notwithstanding; also one cow, two swine, all necessary wearing apparel and bedding.

XVI. And be it further enacted, That it shall not be lawful for any sheriff or other officer to whom any such execution shall be directed or any of their deputies, or any person for them or either of them to purchase any goods or chattels, lands or tenements at any sale by virtue of any execution, and all purchases so made by them or any of them, or for the use of them or any of them, shall be void.

XVII. And be it further enacted, That satisfaction of any judgment rendered in the supreme court or in any court of common pleas may be acknowledged before any judge of any court of common pleas of any county in this state, and all satisfaction pieces shall be signed by the party or parties in whose favor such judgment shall have been rendered, or one of them, or by his or their attorney thereunto lawfully authorised, and the judge doing the services, shall be entitled to the like fees as now are or shall be allowed by law.

CHAP. CCIII.

An ACT for the Payment of certain Officers of Government, and for other Purposes.

Passed April 13, 1813.

[S. sess. 36. 334, 338.]

When a sheriff sells land under execution and dies before signing a deed, it may be done by his executor.

S. 334. Sess. 36. c 203 § 34

XXXIV. And be it further enacted, That whenever any sheriff of any county of this state has made or shall make sale of any lands, tenements or hereditaments under and by virtue of any execution to him directed and delivered, and has died or shall die before signing and executing the deed of sale and conveyance, it shall and may be lawful for the executors or administrators of such deceased sheriff to make and execute a deed of conveyance to the purchaser in the same manner as the said deceased sheriff might or could have done had he remained alive, any law to the contrary notwithstanding.

Interest to accrue on judgments on contracts from the time of recovery.

S. 378 Sess. 36. c 203 § 50

L. And be it further enacted, That in all executions to be issued on judgments hereafter to be recovered upon contracts, it shall be lawful to direct the collection of the interest on the said judgment from the time of recovering the same until paid.

For 37 sep. Ch. 141 - 3^d Vol. page 167 - Sunday anti-
= des are exempted from execution -

Act Concerning Infants & Partitions of their lands
37. Sess. Ch. 108 - Vol. 3. 128 -

The general act amended as it relates to Denver
37. Sess. Ch. 198. Vol. 3. 249 -

CHAP. C.—(R.L.)

*An ACT for the Partition of Lands.**

Passed April 12, 1813.

[Br. ed. 82.—S.&L. v. 2. 237, 242.—V. S. v. 1. 76, 103, 111, 144, 408 to 414. Ibid. v. 2. 515.—J.&V. v. 1. 202 to 208.—Ibid. v. 2. 185.—Gr. v. 1. 165, 296.—Ibid. v. 2. 13. 340.—Ibid. v. 3. 44, 129, 465.—K.&R. v. 1. 217, 542.—W. v. 3. 625.—Ibid. v. 4. 440.—Ibid. v. 5. 79, 207.—Sess. 34. ch. 43.]

I. *Be it enacted by the People of the State of New-York represented in Senate and Assembly,* That where any lands, tenements, or hereditaments, shall be held in joint tenancy, tenancy in common, or coparcenary, it shall be lawful for any one or more of the parties interested therein, to present a petition to the supreme court, or to the court of common pleas of the county in which the premises are situate, or to any mayor's court of any city where such premises lie, describing in such petition, such lands, tenements or hereditaments, and setting forth the rights and titles of all the said parties therein, or in case any one or more of such parties, or the share or quantity of interest of any one or more parties, are unknown to the petitioner, setting forth the same in such petition, accompanied by an affidavit, that such petitioner is ignorant of the names, rights or titles of such person or persons, as the case may be, and by the said petition praying the court to whom the same shall be directed, that the same premises may be divided, by commissioners, to be appointed by the said court, according to the respective rights of the parties therein, and in pursuance of the directions of this act.

H. *And be it further enacted,* That a copy of such petition shall be served forty days at least previous to the term in which the same shall be presented, on all the parties concerned in such lands, tenements or hereditaments, who shall not join in the said petition, or on the guardians of such as are minors, together with a notice subscribed by the petitioner, and directed to each of the said parties, or their guardians, as aforesaid, that an application will be made to the said court on some certain day in term, to be specified therein, or as soon thereafter as counsel can be heard for the appointment of such commissioners as aforesaid mentioned: *Provided,* That if either of the parties to whom such notice

Partition of land by and between whom, and how made. K.&R. v. 1. 548 § 1. 9 W. v. 3. 625 Sess. 27. ch. 78 § 1 W. v. 5. 79. Sess. 3. ch. 63. 4 John. Rep. 202—5 ib. 80. 2 Caines' Rep. 169—809 W. s. c. 31. 31 J. & V. c. 1 32 H. c. 32 Sec. 4 Ann. c. 18 7 Ann. c. 18 2 Bl. Com. 109

Petition and notice of application for partition how and when to be served. K.&R. v. 1. 542 § 1 W. v. 3. 625 Sess. 27. ch. 78. § 1—1 Caines' Rep. 7. 20.

[* The first act which was passed for the partition of lands, was on the 30th Oct. 1708.—*Vide* Br. ed. 82.—V. S. v. 1. 76.—This act was continued by different acts to Nov. 1, 1721, when it expired by its own limitation. Afterwards, on the 11th Nov. 1726, another act for partition of lands was passed, which was repealed by the king Feb. 15. 1728. *Vide* V. S. v. 1. 144. An act for the collection of quit rents and for partition of lands in order thereto was passed Jan. 8, 1762, and explained by an act of March 20, 1762, and ratified all former partitions, and provided for future partitions. *Vide* V. S. v. 1. 408 to 414, 416. This act was continued by an act of Dec. 31, 1768. *Vide* V. S. v. 2. 515. On the 16th March, 1785, was passed the first act for the partition of lands under the state government. *Vide* J.&V. v. 1. 202, and the system was altered and amended from time to time, until the present mode was adopted. *Vide* References below the title of this act. *Note.*—The 14th, 15th, 16th, 17th, 18th and 19th sections of this act are original sections, and were recommended by the revisors to the legislature for adoption.]

Proviso.
Service how
made as to
non-resident,
or unknown
parties.

shall be directed, shall reside out of this state, or cannot be found therein, or in case either of the parties, interested in the premises, shall be unknown to the petitioner (to be made to appear in either case by affidavit) then, and in every such case, instead of a service of a copy of the petition and notice as aforesaid, on such absent or unknown party, or parties, it shall be sufficient for the petitioner to cause a copy of such petition and notice to be previously published for the space of three months, once in every week, in one of the public newspapers, printed in each of the cities of Albany and New-York, which publication shall be deemed a sufficient notice to such parties, though the names of some or all of them shall not have been mentioned therein, in like manner as if the same had been personally served, and their names had been mentioned therein; but nothing in this proviso shall prevent the personal service of a copy of the said petition and notice on any party out of this state, but such service shall be deemed sufficient as to the party or parties upon whom the same shall have been made, without any publication thereof as aforesaid.

Order of the
court to plead
and shew title
on presenting
petition, etc
and proof of
service.

K. & R. v. 1.542
§ 2.

W. v. 3. 626

Sess. 27. ch. 78.

§ 1, 2.

1 Chins' Rep.

12:—4 John.

Rep. 202.

§ 16. 92, 270

§ 16. 180, 482

§ 16. 8, 331,

388, 459.

III. *And be it further enacted*, That on presenting such petition, and proof being made by affidavit, to the satisfaction of the said court, that copies of such petition and notice have been duly served or published as aforesaid, the said court shall by rule order the parties interested in the premises, who are known, to appear and answer the said petition within the usual time allowed for pleading in such court; and shall also, by rule, order such of the parties as are unknown, or whose share or interest is unknown (if any such there be) to appear and shew title to the proportions which they may claim of the premises, set forth in the said petition, and to answer the said petition within the like time allowed for pleading as aforesaid, and such parties as are known, or any of them, may, within such time, or within such further time as the court may allow for the purpose, appear and answer the said petition, and such of the parties as were unknown at the time of presenting the petition, may, within the time aforesaid allowed, appear and shew title as aforesaid, and answer or plead to the said petition as to a declaration, and thereafter the proceedings shall, in all respects, be conformable to this act, as if all the parties had originally been named in such petition, and such further pleadings may be thereupon had between the parties respectively, according to the rules and practice of the said court, as in other actions or suits depending therein, until an issue or issues in law or in fact, be joined between the said parties respectively, or some of them, and such of the parties as shall answer the said petition, may plead thereto, *non tenet in simul*, and give any special matter in evidence under the said plea, which might be otherwise pleaded, giving notice with the said plea of the several matters so intended to be given in evidence; and all such issues shall be tried, and the like proceedings for the trial thereof, shall be had as in other actions in the said court, and the said court shall have power to award new trials as in other cases, and after the final determination of all such issues, the said court shall ascertain and determine the re:

Parties may
plead *non tenet in simul*,
etc.

spective rights of the parties, in such lands, tenements or hereditaments, and give judgment; that partition thereof be made between them according thereto, or between such of them as shall have any right therein; and if it shall not appear to the court, after the trial of any issues, or after judgment by default, confession, or otherwise, against such of the parties as are known, what part or interest any parties whether known or unknown to the said court, and who shall not have appeared or pleaded in the said cause, have in the premises, then it shall be lawful for the court to give judgment, that partition be made so far as the rights or interests of the parties who are known have been ascertained, and the residue of the said premises shall remain for the parties so unknown, subject to be divided between them upon application to the said court, or otherwise, according to this act, or by consent of such parties at any future time: *And further*, after judgment as aforesaid, either on verdict, default, confession or otherwise, the court shall, by rule, appoint three reputable freeholders, commissioners, to make the said partition, quality and quantity relatively considered, according to the respective rights and interests of the parties, to be adjudged as aforesaid; and in case there shall be any owners, who or whose interest shall be unknown, the court shall designate and describe the part or portion to remain for such owners: *Provided always*, That such partition shall not preclude any person not named therein, and who shall claim any right or title to the premises in question, from controverting the title or interest of the parties between whom such partition shall have been made.

Court to ascertain the rights of parties and give judgment accordingly, and also proceeding in case of unknown owners, etc. 1 Calmes' Rep. 121.

Court to appoint commissioners to make partition.

Proviso as to the rights of persons not named. 3 John. Rep. 459.

Commissioners to take an oath K. and B. v. 1 543, sec. 3

Duty of the commissioners.

Judgment on their return

IV. *And be it further enacted*, That the commissioners to be appointed as aforesaid, shall, before they proceed to make such partition, be severally sworn or affirmed, as the case may be, before one of the judges of the said court, or a commissioner appointed to take affidavits to be read in the said court, honestly and impartially to execute the trusts reposed in them, as commissioners for making partition of the lands, tenements and hereditaments, as directed by the said court, which oath or affirmation shall be taken and subscribed by the said commissioners, and filed in the office of one of the clerks of the said court, at or before the time of making the return by them of such partition as hereinafter mentioned; and the said commissioners, or any two of them, shall forthwith proceed to make partition according to the judgment of the said court, and a return thereof being made in writing by them, or any two of them, under their hands and seals, to the said court, and specifying therein the manner of executing their said trust, and describing the land divided and the shares allotted as shall be directed by the judgment of the court, and the same being proved or acknowledged before any judge of the said court, or before some officer authorised to take the proof and acknowledgment of deeds and conveyances by law, and such return being confirmed, judgment shall thereupon be given, that such partition be firm and effectual forever; and such judgment shall be binding and conclusive on all parties named therein and their legal representatives, and also on all such parties interested as are not known, to whom notice shall have been given by pub-

Notice.
Return may
be set aside,
new commis-
sioners be ap-
pointed

lication as aforesaid, and their legal representatives, except as is declared in the preceding section: *Provided*, That it shall be lawful for the court, on good cause shewn, to set aside the return of the said commissioners, and to appoint, as often as may be necessary, new commissioners, who shall in all things proceed as the other commissioners are herein directed to proceed, and the judgment thereupon to be given shall be of like effect as if judgment had been rendered on the first return.

**Commission-
ers may be or-
dered to sell
the premises,
in case no par-
tition can be
made without
prejudice**
K. and R. v. 1
§ 44, sec. 3
W. v. 5, 207
Sess. 30, c. 158
S. 60
Sess. 34, c. 43
sec. 1

V. *And be it further enacted*, That if it shall appear by the return of the said commissioners, or of any two of them, to the said court, that the lands, tenements or hereditaments in question, are so circumstanced that a partition thereof cannot be made without great prejudice to the owners of the same, then it shall be lawful for the court to order the said commissioners to sell the premises in question, at public auction, to the highest bidder or bidders, after giving such public notice of the time and place of such sale as the said court may deem reasonable and shall direct; and the said commissioners, or any two of them, having reported their proceedings in writing, under their hands, to the said court, and the court approving thereof, shall give judgment that the sale be valid and effectual in law, and shall, by rule, direct the said commissioners, or any two of them, to execute good and sufficient conveyances in law, to the purchaser or purchasers, which conveyances shall be a bar, both in law and equity, against all the owners named in the said proceedings, and against such as are not named, and who have had notice given them by publication in the public papers in the manner directed by this act, and all other persons claiming by, from, or under them, or any or either of them.

**Sale to be re-
ported and
judgment
thereon**

**Deeds to be
executed by
commissioners**

**Costs and
charges in
case of known
owners how
recovered and
paid, and also
in the case of
unknown own-
ers, &c.**
K. & R. v. 1, § 44
§ 4
W. v. 3, 625
Sess. 27, c. 78
sec. 1

VI. *And be it further enacted*, That when all the parties interested in any proceeding under this act, shall have been known and named therein, the costs and charges attending such proceeding, shall be first paid by the petitioners pursuing the same; and the said court, on every final judgment to be rendered as aforesaid, either for partition of such lands, tenements or hereditaments, or upon a sale thereof, or for the partition of part, and upon a sale of the residue thereof, shall also adjudge each of the parties concerned therein, other than the said petitioners, to pay to the said petitioners a proportion of the said costs, according to their respective rights therein, which costs shall be taxed as in other cases for the like or similar services, and may be levied by execution against the person, goods, chattels, lands and tenements of the respective parties who shall be adjudged to pay the same as in other cases where costs are to be recovered: and in case of any such sale, the court may order the same to be paid or retained out of the monies arising from such sale, and due to the parties who ought to pay the same; but where any one or more of the parties interested shall have been unknown and not named in the same, the court shall adjudge such of the parties as are known and named to pay to the said petitioner their proportions respectively of the costs aforesaid, according to their respective rights therein, to be taxed, recovered and paid in manner aforesaid directed, and as to such of the parties as are not known or

**How levied
and collected**

**In case of un-
known parties**

named, judgment shall be rendered that the residue of the costs, which shall not have been adjudged against the owners who are named in manner aforesaid, shall be levied and collected (in case no sale has been made) out of the proportion of the premises remaining undivided for such unknown parties, and for which residue execution may issue against such proportion of the premises, and the same may be seized in execution, and so much thereof as shall be necessary to pay the aforesaid residue of the said costs, together with the sheriff's fees and other charges thereon, may be sold and conveyed on such execution in like manner as if the same had been a writ of *fiery facias* issuing out of the same court in a personal action against the owner or owners of such premises; and such sale and conveyance shall be equally valid and effectual as if the owner or owners of the said premises so sold and conveyed had been known and named in the said proceedings, and the execution issued thereon as aforesaid.

Judgment how rendered in such case

As to execution in such case

Sale under the execution

VII. *And be it further enacted*, That where there shall be any owners interested, who are not known or named in the proceedings under this act, then and in that case, the commissioners, in case of a sale of the premises, shall bring the monies arising therefrom into court, and after deducting the costs and expenses adjudged, according to the several proportions set forth in such judgment it shall be lawful for the court to direct the monies adjudged to such unknown owners, to be placed at interest, and secured for their benefit, until claimed, and the residue of the monies brought into court, shall be distributed among the owners that are named in the proportions adjudged to them respectively: *Provided always*, That the said court may in its discretion require all or any of the said owners, before they shall be permitted to take out of court any of the monies arising from any such sale, to give security to the satisfaction of the said court, to refund such money, with interest thereon, in case it shall at any time thereafter appear that they were not entitled thereto: *And further*, That when all the parties interested shall have been known and named in the proceedings under this act, the monies arising from every such sale, shall be ordered by the said court to be paid by the said commissioners to the said parties, their guardians or legal representatives, in proportion to their respective rights in the lands, tenements, or hereditaments so sold; deducting from their respective shares, the costs and charges which may be ordered to be retained out of the same as aforesaid; and if any of the said parties shall be absent from this state, without such legal representative, the proportion of the said monies due to every such party, shall be put out at interest, on sufficient security on real property, by order and under the direction and controul of the said court, for the benefit of such party.

Commissioners when and how to bring monies into court, &c.
K & R. v. 1, 545 § 3

When monies to be placed at interest for unknown owners.

Proviso.

Monies when and how taken out of court.

When all the owners are known then com'rs to distribute the monies, &c.

Deducting the costs.

But if any of the parties be absent from the state, his share to be put out at interest.

VIII. *And be it further enacted*, That it shall be lawful for the said court, for any of the purposes intended by this act, and before or after the commencement of any proceeding by virtue thereof, to appoint guardians for such of the parties as may be minors, whether such minors shall reside in or out of this state, and the court, on appointing any guardian as aforesaid, shall, for

Guardians for infants may be appointed, &c.
K & R. v. 1, 545 § 6—1 Johns. Rep. 509

Who are to give security.

Their powers and duties.

Compensation to commissioners.
K. & R. v. l. 546
§ 7

Joint tenants & tenants in common, for life or for years, etc.
K. & R. v. l. 546.
§ 8

Proceedings in partition in mayor's courts or courts of common pleas removable by certiorari.
K. and R. v. l. 546 sec. 9

Writs of error may be brought as in other actions.
K. and R. v. l. 547, sec. 11

This act not to revive claims which are barred by time, etc.
W. v. 3. 626
Sess. 27, c. 78,
sec. 1

the benefit of such minors, take sufficient security of every such guardian, by bond to the people of this state, conditioned for the faithful discharge of the trust committed to such guardian, and to render a just and true account of such guardianship, in all courts and places when thereunto required, which bond or bonds shall be filed in the clerk's office of the said court; and the guardians of all minors so to be appointed, shall be and hereby are respectively authorised and empowered, in behalf of the respective minors whose guardians they shall be, to do and perform every act respecting the proceedings for the partition of any lands, tenements or hereditaments, under this act, or any matter or thing relating thereto, which shall be binding on such minors, and be deemed as valid to every purpose as if the same had been done by such minors after having arrived at full age.

IX. *And be it further enacted*, That the commissioners so to be appointed, shall be allowed such sum for their services and expenses, as the said court shall direct, and which shall be paid by the said petitioners, and shall be allowed as part of the costs to be taxed as aforesaid.

X. *And be it further enacted*, That all joint tenants and tenants in common, who now hold or hereafter shall hold, jointly or in common, for years or for life or lives, and all joint tenants and tenants in common, where one or more of them have, or shall have estates for years or for life or lives, with the other or others of them, who have or shall have estates of inheritance or in fee, and each of them shall in every such case have the like remedy for the partition of any lands, tenements or hereditaments so possessed or held by them in joint tenancy or tenancy in common, and in all respects subject to the like proceedings and regulations as are provided by this act.

XI. *And be it further enacted*, That it shall be lawful for any of the parties in any proceeding to be had in any court of common pleas or mayor's court under this act, at any time before judgment be thereupon given that partition of the lands, tenements or hereditaments in question be made, or before a juror on any such issue be sworn, to remove into the supreme court all such proceedings by writ of *certiorari*, to be allowed by one of the judges of the said supreme court; and upon the removal of the same into the supreme court, the like proceedings shall be there had as if the petition had been first presented to the said supreme court.

XII. *And be it further enacted*, That on all final judgments to be given in any of the said courts upon any such partition being made, or upon the sale of the whole or part of the premises mentioned in any petition presented by virtue of this act, or upon any such sale of part and partition of the residue thereof, it shall be lawful for any of the parties to such judgment, to bring a writ or writs of error thereon, within the same time and under the like restrictions and regulations as in other cases.

XIII. *And be it further enacted*, That nothing in this act contained, shall be construed in any manner to authorise the revival or prosecution of any claim to lands which might otherwise be barred by the statute of limitations, or by the acquiescence of

any party having such claim, or to aid the prosecution of any claim that may not be so barred, but every such claim shall be and remain in the same situation as if this act had not been passed.

XIV. *And be it further enacted*, That whenever partition shall be made in any of the courts aforesaid, or in the court of chancery in this state, or a sale shall take place by virtue of this act, and either of the parties, plaintiff or defendant to such partition, shall have a freehold estate in the premises as tenants, by the curtesy or in dower, or as other tenant for life, whether such life estate be created by act, and operation of law, or by devise, grant or otherwise; and the person entitled to the reversion, remainder or inheritance, after the termination of the particular estate, is unknown or uncertain, at the time of presenting the petition under this act, or of commencing proceedings in the court of chancery, or before partition or sale made, so that they cannot be made parties thereto, either by reason that the heir at law of the party last seized of the inheritance shall be contingent or uncertain, or that the ownership of the inheritance shall depend on an executory devise, or the remainder shall be a contingent remainder, then, and in every such case, the partition or sale shall be binding on such person or persons as would have become entitled to such reversion, remainder or inheritance, upon the termination of the particular estate as fully, absolutely, and effectually, as if such person had been known and named in such proceedings: *Provided*, That notice shall have been given, or published to such unknown or uncertain tenant in reversion or remainder, or owner of the inheritance, in the manner prescribed in and by this act; and such person shall be entitled to be made a party, and to all and singular the other benefits and privileges of pleading and trial, as is allowed by this act to unknown owners; and it shall be lawful for the court, before whom the petition shall be pending, to admit any person who by any contingency contained in any devise, or grant, or otherwise, may thereafter be entitled to any beneficial interest in the premises, to appear and defend the same: *And further*, In case a sale be made under this act, the court before whom such proceedings shall be had, shall take order for securing a proportion of monies, which the person who would have been entitled to the inheritance upon the termination of such particular estate, would justly be entitled to.

XV. *And be it further enacted*, That the interest and estate of every such tenant by the curtesy, or in dower, or other tenant for life, who shall be made a party to the proceedings in any such partition, shall pass by a sale of the premises ordered by virtue of this act, and thereupon such tenant shall be entitled to the interest or income of a just proportion of the purchase money for life, to be ascertained and adjudged by the said court, and the court shall take order for securing the same to him, her, or them accordingly: *And further*, In any case of sale or partition under this act, and before judgment therein given, the court shall examine and ascertain the rights, titles, and interests of the parties,

Proceedings in case either party is a tenant by the curtesy, in dower, or for life, etc. 8 John. Rep. 560—5 Ib. 80.

Proviso.

In case of a sale under the preceding section, how the monies are to be distributed or put at interest.

plaintiffs and defendants to such proceedings, that the purchaser under such sale may be protected in his title acquired thereby.

The court of chancery authorised to direct a sale to be made in partition, &c.

XVI. *And be it further enacted*, That the court of chancery, in cases of partition pending therein, may decree a sale of the premises in such cases as the courts of law are authorised by this act, or where the ends of justice shall require it; and the said court of chancery, in any case where it shall decree a partition to be made, if the same cannot be made equal between the parties without prejudice to their rights and interests, may decree a compensation to be made by one party to the other, for equality of partition according to the nature and equity of the case.

Sales and partitions in chancery how to operate.

XVII. *And be it further enacted*, That all sales and partitions made under and in virtue of proceedings had in the court of chancery, shall be firm and effectual forever; and the final decree of the said court, for or upon the partition or sale of any lands, tenements, hereditament or premises whatever, mentioned in any bill or petition presented according to law, and the course and practice of the said court, or for or upon sale of part and partition of the residue thereof, shall be binding and conclusive on all parties named in the said bill or petition, and their legal representatives, and also on all such parties interested, who or whose interests may be unknown, and their legal representatives, as absolutely and effectually, to all intents and purposes, as if such sales, partitions and proceedings, had been made and taken place under this act, in a court of law, and judgment had been thereupon given in manner as herein aforesaid: *Provided*, That in case any one or more of the parties interested in the premises, or the estate, or quantity of interest of any or either of the owners, are unknown to the complainant or petitioner, suitable allegations and charges to that effect shall be inserted in the bill or petition, and an affidavit of the truth of such allegations, made by one of the parties, and annexed to, and filed with, the said bill or petition, and an order of the said court, published for three calendar months, once at least in every week, in a newspaper printed in each of the cities of New-York and Albany, containing therein a sufficient description of the premises whereof partition is sought, and requiring all parties interested in the same to appear and answer the bill or petition, by a day in the said order to be specified, and the publication of which order shall authorise a decree or order of the said court for taking the said bill or petition *pro confessa* against all such unknown parties as shall not appear and answer by the day mentioned in the said order, or on such further day as the said court shall appoint; and all such as may appear shall be entitled to be made parties to the suit, and the said bill or petition shall be amended accordingly: *And provided further*, That it shall be lawful for any party to such decree, or any party interested in the premises, though not named in the pleadings, to appeal from the said decree, or from any decree or order of the said court in the cause, within the same times, and under the like restrictions and regulations, as in other cases.

How far binding.

Provido, proceedings where some of the owners are unknown, &c.

Order of the court to be published.

Bill or petition where and how to be taken *pro confessa*.

Further proviso

Proceedings in partition not to operate by

XVIII. *And be it further enacted*, That if any of the parties in any suit for the partition of lands, now depending, or here-

after to be commenced, shall die, the proceedings in such case shall not be thereby abated, but such suit may be continued on suggestion of the death of such party as may die, in case the interest shall survive to the survivor or survivors, and in other cases such suit shall and may be revived by or against the heirs or devisees of such deceased party, in such manner, and by such proceedings as the court, in which such suit is or shall be depending, may from time to time direct.

XIX. *And be it further enacted*, That nothing in this act shall be so construed as to invalidate any proceedings had, or to be had, in any suit already commenced for the partition of lands, and that all proceedings in any such suit hereafter to be had, may be according to the provisions of this act, or according to the several acts in force before the passing of this act.

This act not to affect proceedings already commenced.

CHAP. LVI.

An ACT for the amendment of the Law and the better advancement of Justice.

Passed, April 5, 1813.

[Br. ed. 31.—S.&L. v. 1. 106, 356.—V. 8. v. 1. 95.—Ibid. v. 2. 517, 613, 638, 767.—J.&V. v. 2. 242, 269, 281, 437.—Gr. v. 2. 73, 102, to 116, 261.—Ibid. v. 3. 358.—K.&R. v. 1. 346.—W. v. 3. 354.—Ibid. v. 4. 247.—Ibid. v. 5. 504.—Sess. 34. ch. 202, 238, 246.]

1. *Be it enacted by the people of the State of New-York, represented in Senate and Assembly*, That it shall be lawful for any defendant or tenant in any action in any court of record to plead the general issue, and to give any special matter in evidence, which if pleaded would be a bar to such action, giving notice with the said plea of the matter or several matters so intended to be given in evidence: *And further*, That if two or more persons dealing together, be indebted to each other, or have demands arising on contract or credits against each other, and one of them, or his or her executors or administrators sue any one or more of the others, his or their executors or administrators, in any court of this state, if the defendant cannot gainsay the deed or assumption upon which the suit is brought, it shall be lawful for such defendant to plead the general issue as aforesaid, and give notice in writing with the said plea, of what such defendant will insist upon at the trial for his or her discharge, and to give any such bond, bill, receipt, account, contract, credit or demand so given notice of, in evidence; and if such suit be brought on a bond or other contract for the recovery of a penalty for the non-payment of money only, and if any bond, bill or contract with such penalty as aforesaid, shall be given in evidence for the plaintiff or defendant upon such trial, in all such cases the sum *bona fide* and in equity due, and not the penalty, shall be deemed to be the debt.

The general issue with notice of special matter of like effect as if special matter had been pleaded.
K.&R. v. 1. 346 see 1
2 John Rep 183
5 Ibid. 123
8 Ib. 109, 456
[No similar provision in England.]
In case of mutual dealings, defendant may set off his demand on notice given, and may have judgment for the balance if any due.
2 Geo. 2. c. 23
5 Geo. 2. c. 30
8 Geo. 2. c. 24
3 Bl. Com. 304, 398
2 Caines's Rep 33, 299
2 Caines's ca. in Error 303

[*Note*.—The English statutes allow the set-off to be pleaded or notice thereon to be given with the general issue: But no balance is allowed to be recovered against the plaintiff. *Set-offs* were not allowable at common law. *Set-offs* were first allowed in the colony, and the defendant permitted to have a balance certified in his favor, Sept. 4, 1714.—*vide* S.&L. v. 1. 106—V. 8. v. 1. 95.]

1 John. ca. 51
 2 Ibid. 236
 3 Ibid. 148
 4 John. Rep
 247, 248
 5 Ibid. 274
 6 Ibid. 105, 118
 7 Ibid. 153,
 470
 8 Ibid. 327
 Judgment in
 such case as
 the executor, etc

due; and if it shall appear that the debt or sum demanded is paid or satisfied, the jury shall find for the defendant, and judgment shall be entered that the plaintiff take nothing by his writ, bill or plaint, and unless the plaintiff prosecute as executor or administrator, the defendant shall also recover his costs of suit; and if it shall appear that any part of the debt or sum demanded is paid or satisfied, then so much as is found to be paid or satisfied shall be discounted, and the plaintiff shall have judgment for the residue only, with cost of suit; but if it appears to the jury that the plaintiff is overpaid, then they shall find a verdict for the defendant, and certify to the court how much they find the plaintiff to be indebted or in arrear to the defendant more than will answer the debt or sum demanded; and the sum so certified shall be recorded with the verdict, and the defendant shall have judgment and execution for the same, together with costs of suit, unless the plaintiff prosecute as executor or administrator, in which case the sum so certified shall be deemed a debt of record to be paid in the course of administration; and the defendant for recovery thereof, shall have an action of debt, or a *scire facias* against the plaintiff in the said action.

Causes which
 may be sub-
 mitted to re-
 ferees, and
 when and how
 etc
 K. and R. v. 1
 347 sec 2
 9 and 10. W
 3 e 15
 1 Jac. 1 e. 10
 1 Caines's Rep
 247, 149, 161
 2 Ibid. 251
 3 Ibid. 82, 129
 1 John. ca.
 238, 280, 334,
 394
 2 Ibid. 224, 402
 1 John. Rep
 138, 314, 409
 2 Ibid. 183, 374
 3 Ibid. 143, 260
 6 Ibid. 329
 9 Ibid. 312
 10 Ibid. 158

Judgment to
 be entered on
 their report

II. *And be it further enacted*, That whenever it shall appear probable in any cause depending in any court of record in this state, as well where executors or administrators are parties as otherwise, that the trial of the same will require the examination of a long account on either side, the said court, at any time after issue is joined in such cause, is hereby authorised, with or without the consent of parties, to refer such cause by rule to be made at discretion to referees, who shall be three such persons as the court shall nominate, unless upon naming them, the parties agree upon and name others, or shall elect that three persons be ballotted for out of the panel of the jurors, if there be a jury returned for the trial of the cause, in the usual form of balloting for jurors; which referees finally fixed on, shall hear and examine the matters in controversy, and report thereon upon pain of contempt, and an entry shall be made upon the record of such reference, and day shall be given to the parties from time to time until the referees shall make a report in the premises, or they be thereof discharged; and if the report of the referees or the major part of them, shall be confirmed by the said court, and any sum be thereby found for the plaintiff, judgment shall be entered for the same with costs, if by law the plaintiff would have recovered costs had a verdict passed in the same cause for the sum so reported to be due; but if the referees or a major part of them, shall report that there is not any thing due to the plaintiff, and the report be confirmed, then judgment shall be entered against the plaintiff, that he take nothing by his writ, bill or plaint, and the defendant shall in such case have judgment for and recover his costs to be taxed against the plaintiff, if by law such defendant would have been entitled to costs if a verdict passed in the

[*Note*.—In England no judgment can be entered on the report of referees or arbitrators: The mode is by *attachment*, in case the submission shall have been made a rule of court. References were first authorised in this colony, December 31, 1768—*vide* V. S. v. 2. 517, and judgment authorised to be given thereon.]

same cause for him; and if in any case the referees or the major part of them shall report any sum to be due to the defendant, and the report be confirmed, then judgment shall be entered against the plaintiff that he take nothing by his writ, bill or plaint: *And further*, the defendant shall recover against such plaintiff the sum so reported to be due, with costs of suit to be taxed, and shall have execution for the same unless the plaintiff prosecute as executor or administrator, in which case the sum so reported, with the costs so taxed, shall be deemed a debt of record to be paid in the course of administration, and the defendant for the recovery thereof, shall have an action of debt or a *scire facias* against the plaintiff.

Defendant how to recover the balance if any reported in his favor.

III. *And be it further enacted*, That where any such action or *scire facias* shall be brought for the recovery of any sum so found or reported to be due to any defendant, the person against whom such action or *scire facias* shall be brought, may plead that he had fully administered the goods of his testator or intestate, at the time of the verdict given or a report made, and may give in evidence any payments made by him or judgment obtained against him before that time.

How executor etc. may plead when sued for such balance. K and R. v 1 348. sec 3 References *supra*.

IV. *And be it further enacted*, That upon taxing the costs in all causes so referred where costs are to be recovered, a reasonable allowance shall be made to the prevailing party for such services and expenses as may accrue upon or attend the reference of the cause, and process of subpoena may issue to convene witnesses before the referees, as is usual on the execution of writs of inquiry of damages, who shall be examined on oath, and there shall be allowed to each referee attending the said business, the sum of one dollar for every day necessarily spent in the business of the reference, besides a reasonable allowance for their expenses, which shall be paid by the prevailing party, and shall be allowed upon taxing costs where costs are recoverable: *And further*, each referee before he proceeds to the business of the reference shall take an oath faithfully and fairly to hear and examine the cause, and make a true and just report, according to the best of his skill and understanding; which oath as well as the oaths of the witnesses may be taken before any judge of any court of record or any justice of the peace.

Expenses of reference and witnesses taxable. K and R. v 1 348. sec 4

Oath of referees.

V. *And be it further enacted*, That where any action of debt is brought upon any single bill, or where any action of debt or *scire facias* is brought upon any judgment, if the defendant hath paid the money due upon such bill or judgment, such payment may be pleaded in bar of such action; and where an action of debt is brought upon any bond, which hath a condition or defeazance to make void the same upon payment of a less sum, at a day or place certain, if the obligor, his heirs, executors or administrators, have, before the action brought, paid to the obligee, his executors or administrators, the principal and interest due by the condition or defeazance of such bond, though such payment was not made strictly according to the condition or defeazance, it may nevertheless be pleaded in bar of such action, and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeazance, and had been so pleaded.

Payment pleadable in bar to suits on judgments, bonds or bills. K and R. v 1 349. sec 5 4 & 5 Ann c 16. sec 12

Defendant may bring money into court on such writ.
K.C.R. v 1
349. sec 6
4 Aug. c 16

Proceedings on bonds for the performance of covenants, and how to assign breaches and assess damages, etc.
K. and R.v. 1.
349, sec. 7
W. v. s. 500.
Secs. 32. c 137,
sec. 1
6 and 9 W. 3
c. 11—1 Saund.
Rep. 53—note
1—3 Saund.
Rep. 187, notes
a. b. c.—2 John
c. 406—3 B.
397—2 John.
Rep. 413—4
Th. 189, 213—
8 B. 111

Enquiry may be executed before circuit court, etc. or before the sheriff as in other cases.

When execution to stay.

When defendant shall be discharged.

But judgment to remain as security for further breaches, etc.

VI. *And be it further enacted*, That if at any time pending an action upon any such bond with a penalty, the defendant shall bring into court all the principal money and interest due on such bond, and also all such costs as have been expended in any suit in law or equity upon such bond, the said money so brought in shall be deemed and taken to be in full satisfaction and discharge of the said bond, and the court shall give judgment to discharge every such defendant of and from the same.

VII. *And be it further enacted*, That in all actions prosecuted in any court of record upon any bond, or for any penal sum for non-performance of any covenants in any indenture, deed or writing, or upon any bond with any condition other than for the payment of money, the plaintiff shall assign as many breaches as he may think fit, and the jury upon trial of such action, shall assess not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so assigned, as the plaintiff, upon the trial of the issues, shall prove to have been broken; and the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if the judgment shall be given for the plaintiff on a demurrer or by confession or *nihil dicit*, the plaintiff may suggest upon the record as many breaches of the covenants, conditions or agreements, as he shall think fit, upon which shall issue a writ to the sheriff of the county where the action is laid, to summon a jury to appear at the next circuit court or sittings to be held in the county where the venue in such action is laid, or before the sheriff of such county, to enquire of the truth of every one of those breaches, and to assess the damages that the plaintiff shall have sustained thereby, in which writ, if to be executed at the circuit court or sittings, it shall be commanded to the justice who shall hold such circuit court or sittings, that he make a return thereof to the court from whence the same writ shall issue, at the time in such writ mentioned; and in case the defendant, after such judgment entered, and before any execution executed, shall pay into the court where the action is brought, to the use of the plaintiff, or his executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenants, conditions or agreements, together with costs of suit, a stay of execution of the said judgment shall be entered upon record; or if by reason of any execution executed, the plaintiff, or his executors or administrators, shall be fully paid or satisfied, all such damages so assessed, together with his costs of suit, and all reasonable charges and expenses for executing the said execution, the body, lands and goods of the defendant, shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record; but in each case such judgment shall remain as a further security, to answer to the plaintiff, and his executors or administrators, such damages as shall be sustained for further breach of any covenant, condition or agreement in the same bond, indenture, deed or writing contained, upon which the plaintiff, or his executors or administrators may have a *scire facias* upon the said judgment against the defendant, or against his heirs, devisees, or tenants, or executors or admini

Vol. - 1 Ep. p. 2. N.Y. Ed. 112. for decisions on the
Section of this act.

Sec. 7. See 1 Tidd's Pr. 518, for
the clause of Eng. Statute - 17, 18
in 1818 - 1819

X L 25 — only as to quantum of 7-1-75k
2 T. R. 291 (Dunbar v. Page)

Administrators, suggesting other breaches of the said covenants, conditions or agreements, and to summon him or them respectively to shew cause why execution shall not be had upon the said judgment, upon which there shall be the like proceedings as were in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof upon a writ to be awarded in manner aforesaid; and upon payment or satisfaction in manner as aforesaid, of such future damages, costs and charges, all further proceedings on the said judgment shall again be stayed, and so *toties quoties*, and the defendant, his body, lands and goods shall be discharged out of execution as aforesaid.

VIII. *And be it further enacted*, That if any person be arrested by any process issuing out of any court of record, at the suit of any common person, and the sheriff or other officer shall take bail from such person against whom such process issued, the sheriff or other officer, or in case of the death of such sheriff or other officer, then his executor or administrators, at the request and costs of the plaintiff or his lawful attorney, shall assign to the plaintiff the bail bond or other security taken from such bail, by endorsing the same and attesting it under his hand and seal in the presence of two or more credible witnesses; and if the said bail bond or assignment, or other security taken for bail, be forfeited, the plaintiff, after such assignment made, may bring an action thereupon in his own name, and the court where the action is brought may, by rule of the same court, give such relief to the plaintiff and defendant in the original action, and to the bail upon the said bond or other security taken from such bail, as is agreeable to justice; and such rules of the said court shall have the nature and effect of a defeazance of such bail bond or other security for bail.

Bail bonds assignable to plaintiff by sheriff or his executors, &c. K. & R. v. 1.351 § 8. Secs. 34. ch. 238 § 5 4 Ann. c. 15.

Defendants may be relieved from suits on such bonds and how

IX. *And be it further enacted*, That if in any action there be two or more plaintiffs or defendants, and one or more of them shall die, the action shall not be thereby abated if the cause of such action shall survive, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

When action not to abate by death, &c. K. & R. v. 1.351 § 9. 8 and 9 W. 3 c. 11. sec. 7

X. *And be it further enacted*, That it shall be lawful for any defendant or tenant, in any action, or for any plaintiff in replevin in any court of record, with the leave of the same court, to plead as many several matters as he shall think necessary for his defence: *Provided nevertheless*, That if any such matter shall, upon a demurrer joined, be judged insufficient, costs shall be thereupon given at the discretion of the court, or if a verdict shall be found upon any issue in the said cause for the plaintiff or defendant, costs shall also be given in like manner, unless the judge, who tried the said issue, shall certify that the said defendant, or tenant, or plaintiff in replevin, had a probable cause to plead such matter which upon the said issue shall be found against him.

Defendant by leave of the court may plead several pleas, &c. K. & R. v. 1.351 § 10. 4 Ann. c. 16 sec. 4

XI. *And be it further enacted*, That if any material witness in any action in any court of record in this state shall not reside in this state, it shall be lawful for the said court, on affi-

Commission to examine foreign witnesses how and when to take

K&R. v. 1. 381
 § 11
 1 Caines' Rep
 4, 73, 345, 503
 517
 2 ib. 46, 47,
 283, 350
 3 ib. 105, 321
 1 John. ca. 103
 2 ib. 68, 69,
 70, 285
 3 ib. 137
 2 John. Rep.
 107, 196, 373
 417, 478
 3 ib. 251, 359
 4 ib. 130
 9 ib. 266

How to be ex-
 ecuted and re-
 turned

Effect of de-
 positions so
 taken and re-
 turned
 Parties enti-
 tled to copies

and davit or proof being made thereof to the satisfaction of the said court, and upon motion made by either party in open court, and upon such terms as the said court shall think proper, to award and issue under the seal of the same court a commission to such persons as the same court may think fit, authorising them, or any two or more of them, to examine such witness on oath upon the interrogatories annexed to such commission, and to reduce such examinations into writing, and to return the same annexed to the said commission into the said court with all convenient speed; and the name of every witness to be examined by virtue of any such commission, shall be inserted in the same commission, and the interrogatories for the examination of every such witness shall be drawn and signed by the parties or their counsel in the cause in which the testimony is to be used, or such of them as shall request such commission, and be approved of by the same court, or one of the judges thereof, and shall be annexed to such commission, and each party shall be at liberty, with the approbation of such court or judge, to insert in such interrogatories all such questions as he may deem proper; and the said commissioners, or any two or more of them, shall and may examine the witnesses named therein, or such of them as they can meet with, on oath, and cause the examination of each witness to be reduced to writing and signed by the same witness, and such commissioners shall then also sign the same; and all such examinations and all exhibits produced to such commissioners and proved by any such witness, shall be annexed to the said commission and returned to the court out of which such commission issued, closed up and under the seals of two or more of the said commissioners; and if it is not convenient for either of the said commissioners to carry the same to one of the judges of the said court, then one of the said commissioners shall deliver the same to the agent of the party on whose behalf such witnesses shall be examined, and such agent, or in case of his death the person into whose hands the same shall come, shall deliver the same to one of the judges of the said court, and make oath or affidavit before the same judge, that he received the same from the hands of one of the commissioners; or if such agent be dead, then such affidavit shall set forth in what manner the same came into the hands of the person who shall so deliver the same, and that the same has not been opened or altered since he so received it; and such judge shall then open the same, and endorse upon the commission, as the case may be, either received by the hands of one of the commissioners, or upon the oath of the person who delivers the same, as appears by his affidavit, and subscribe his name to the same endorsement, and shall then deposit the said commission and return with the said affidavit in the office of the clerk of the said court, there to remain as a record; and every such deposition being so taken and returned shall be allowed and read, and shall be deemed as good and competent evidence in the cause in which it shall be taken as if such witness had been sworn and examined *vis a voce* in open court on the trial of such cause; and all parties concerned shall be entitled to take copies of such depositions at their own costs and

charges, as soon as the same shall be deposited in the clerk's office as aforesaid; and in case any such commission shall not be returned within such reasonable time as the said court shall from time to time allow for that purpose, then the said court may proceed as if no such commission had been awarded.

XII. *And be it further enacted*, That where any issue is or shall be joined, whether the issue roll be filed or not, in any action in any court of record, and the plaintiff shall neglect to bring such issue to be tried according to the course and practice of such court, it shall be lawful for such court, at any time after such neglect, upon motion made in open court, due notice having been given thereof, to give the like judgment for the defendant as in cases of nonsuit, unless the same court shall, upon just cause and reasonable terms, allow a further time or times for the trial of such issue; and if the plaintiff shall neglect to try such issue within the time or times so allowed, the said court shall give such judgment as aforesaid, and all judgments so given shall be of the like force and effect as judgments upon nonsuits, and of no other force or effect; and the defendant, upon such judgment, shall have costs in any action where he would upon nonsuit be entitled to the same, and in no other action whatsoever.

XIII. *And be it further enacted*, That all persons jointly indebted to any other person upon any joint obligation, contract, or matter whatsoever, for which remedy might be had at law against such debtors, in case all were taken by process issued out of any court in this state, shall be answerable to their creditors separately for such debts, that is to say: the creditor or creditors of such debtors may issue process against them in the manner now in use; and in case any of such joint debtors be taken and brought into court, he or they so taken and brought in court, shall answer to the plaintiff; and in case judgment shall pass for the plaintiff, he shall have his judgment and execution against such of them as were brought into court and against the other joint debtors named in the process in the same manner as if they had all been taken and brought into court by virtue of such process; but it shall not be lawful to issue or execute any such execution against the body or against any lands or goods the sole property of any person not brought into court.

XIV. *And be it further enacted*, That where two or more persons are or shall be bound in one bond or recognizance jointly and severally, or severally only; it shall be lawful in every such case to join all the obligors in such bond or recognizance; or any part of them, in one action, and to prosecute the same to judgment and execution against the defendants in such action, and against their joint or separate property, and afterwards, if the whole amount due upon such bond or recognizance shall not be levied upon such first suit or judgment, to bring a further action against the residue of the said obligors, or any of them jointly or severally at the option of the plaintiff, and the same to prosecute to judgment and execution against the said residue of the said obligors, or any of them, and against their joint or separate property; but the plaintiff shall not cause to be levied in the whole

Commission to be returned in a reasonable time, or cause to proceed

Judgment as in case of nonsuit for not bringing cause to trial
K. & R. v. 1, 343
§ 12.
14 Geo. 2. c. 17
1 Caines' Rep. 6, 23, 58, 67, 164, 171
2 ib. 47, 52, 93
94, 95, 96, 251, 378
3 ib. 94, 128, 135, 136, 140
1 John. ca. 30, 242
2 ib. 217, 218
1 John. Rep. 141, 491, 507
3 ib. 442, 443, 446, 541
6 ib. 333
9 B. 250, 268

Proceedings against joint debtors where all cannot be taken
K. & R. v. 1, 382
§ 13
[No similar proceeding in England. The mode pursued is to *sequestrare* the defendants not bound.]
2 John. ca. 339, 382
1 John. Rep. 61
2 ib. 67, 270
368
4 ib. 222
6 ib. 57, 98
10 ib. 21, 22

How two or more persons jointly or severally in one bond or recognizance may be sued
K. & R. v. 1, 354
§ 10

more than the amount of the debt and damages due to him, with the costs of suit, and if separate writs shall be issued against such obligors or any of them, the plaintiff shall be at liberty in any stage of the suits to consolidate them into one suit, and shall in no case when two or more suits are depending at the same time upon the same bond or recognizance, or on any promissory note or bill of exchange, to recover more than the costs of one of the said suits; but where the defendants reside in different counties, and writs are issued in several counties, the costs on each writ shall be taxed together, and in the same bill with the costs of such suit.

As to consolidate-
ing suits.

Costs how far
recoverable.

Assessment of
damages by
the clerk in
what cases al-
lowed.
K&R v 1, 354
§ 5
1 John. Rep.
597
6 B. 257
20 B. 199

Either party
may except to
the report of
the clerk.

Form of judg-
ment on the
report of clerk.

Assessment of
damages by
clerk, in cases
of suits on
bail bonds.
K&R. v 1, 354
§ 15

XV. *And be it further enacted*, That when any interlocutory judgment shall be given in any court of law by default, or upon demurrer, or confession, in any action upon any bill of exchange or promissory note for the payment of money, or upon any written contract for a sum certain, though payable in specific articles, or upon a like contract for specific articles, at a value or price stipulated in the same contract, or upon a covenant for the payment of money only, instead of awarding a writ of enquiry, the court shall direct the clerk of such court, if a court of common pleas, and if the supreme court, then the clerk of the said supreme court or the clerk of the court of common pleas of the county where the venue shall be laid, unless the venue shall be laid in the county where the supreme court shall sit, and in such case the clerk of the supreme court only, and it is hereby made the duty of such clerks respectively to perform the service, and to examine, ascertain and determine what sum the plaintiff ought to recover for damages, and either party may except to such report, and upon such exception, the court shall hear and examine the matter, and cause justice to be done to the parties, and shall give judgment for the plaintiff for the sum so reported, or in case of exception to the report for the sum so ascertained by the court; and the judgment shall be entered on the record without entering thereon such reference to the clerk, or any of the proceedings in consequence thereof, in the usual form of entering judgments by confession where the amount of the damages is confessed, except that instead of the words "his damages aforesaid above confessed," the following words shall be inserted, that is to say, "his (or her, or their) damages by occasion of the premises, (to the sum for which the judgment is given) by the court here assessed," or words of like import.*

XVI. *And be it further enacted*, That when any plaintiff shall obtain judgment upon any bail bond taken in any such action, or in any action of debt upon judgment or recognizance, or upon any specialty or contract for the payment of money only, unless the defendant in the original action shall appear and obtain leave to plead therein, the said courts shall direct the clerks respectively

[* No such statutory provision in England. but the courts will in some similar cases refer the damages to be assessed by the master, prothonotary, &c and this as at common law. The clerk first authorized to assess damages in this state, &c. July 1, 1797—vide Gr. v. S. 358.]

as aforesaid, and it is hereby made the duty of such clerks respectively, to perform the service, and to examine, ascertain and report to the court the amount of the debt or sum of money due to the plaintiff in the original action, and either party may except to such report, and upon such exception the court shall hear and examine the matter, and cause justice to be done to the parties; and the plaintiff shall cause the sum so reported or ascertained, with the amount of the costs in the original suit, and in the suit upon the bail bond, to be endorsed upon the execution to be issued upon the judgment obtained on such bail bond, and may cause the same and the poundage thereon and no more, to be levied by virtue thereof; and when any plaintiff shall obtain judgment upon any bail bond taken in any other action, unless the defendant in the original action shall appear and obtain leave to plead therein, the court shall direct common bail to be filed for the defendant in such original action and order a judgment to be entered therein by default, and award a writ of inquiry thereupon, and upon the return of such writ of inquiry the plaintiff may cause the damages found by the jury with the amount of the costs in the original suit, and in the suit upon the bail bond and the poundage thereon, and no more, to be levied on the judgment on such bail bond, and shall cause the same to be endorsed on the execution to be issued in the action on such bail bond.

How and when in such actions writ of enquiry to issue.

XVII. *And be it further enacted*, That in those cases where the courts shall direct their clerks to examine, ascertain and determine what sum the plaintiff ought to recover for damages, it shall not be necessary at any time thereafter to prove the giving or executing any bill of exchange, promissory note, covenant or contract specially and truly set forth in the plaintiff's declaration, but the production thereof to the clerks shall be sufficient evidence of the giving or executing of the same, and the clerks shall endorse on such note, bill or contract that judgment hath been rendered thereon, and the amount of the damages ascertained therein, and shall respectively sign their names thereto.

On assessments before the clerk, not necessary to prove the instrument declared on. K. & R. v 1 365. § 17

But he shall endorse on such instrument the amount of the damages assessed.

XVIII. *And be it further enacted*, That in those cases where it shall be necessary to adduce evidence to the clerks, they shall be and are hereby authorised to swear any witness or witnesses offered, and shall, if required by either of the parties at the time of taking the same, reduce the testimony to writing, and shall report the same to the court on being required.

Where necessary to produce witnesses before the clerk, he shall swear them, etc. K & R. v 1 366. § 18

XIX. *And be it further enacted*, That it shall be the duty of the respective clerks of the several counties within this state to keep some proper person deputy clerk of the same county during the pleasure of said clerk, and as often as such deputy clerk shall die or be removed from office or remove out of the county, or become incapable of executing the office, another shall be appointed in his place by writing, under the hand and seal of the clerk, and every such deputation or appointment shall be recorded in the office of the clerk of the same county, who shall, in case of the death of the clerk thereof, perform all the duties and receive the emoluments appertaining to the office of clerk of the same county and be subject to the same penalties that the clerks of the several

Clerks of counties to appoint & appointees K. & R. v 1 366 § 19

And each deputy is to act as clerk, in case of vacancy by death, etc.

counties within this state are liable to, until a new clerk for the said county shall be appointed and duly sworn.

Allowance to witnesses, etc.
K & R. v 1, 386
§ 20
W. v 3, 344
Sess. 20. c 103
§ 22

Fees on them turn out appearing to testify, etc.

Poor persons, when and how to be assisted in suits gratis.
K & R. v 1
387, § 21
11 H. 7 c 12
23 H. 8. c 18

In trespass quare clausum fregit, def. 'dit may disclaim and plead tender of amends etc.
K & R. v 1
387, § 22
21 Jac. 1. c 10
§ 5

Dilatory pleas to be sworn to etc.
K and R. v 1
387, § 23
4 Ann. c. 16
§ 11

Essoins and wager of law abolished.

XX. *And be it further enacted*, That each person served with process to testify in any court of record within this state shall be entitled to receive as a compensation for his attendance and expenses of such court, the daily allowance specified in the act regulating the fees of the several officers and ministers of justice within this state; and if any person being subpoenaed upon being tendered with the amount of the said allowance, estimating each day's travelling to, attending at, and returning from, such court, computing thirty miles to a day's travelling, and including one day's attendance only, shall not thereupon appear according to the tenor of the said process, without a lawful and reasonable excuse, shall forfeit to the party grieved fifty dollars, and shall also yield further recompence to the party grieved according to the loss and hindrance sustained, to be recovered by action of debt in any court, with costs of suit.

XXI. *And be it further enacted*, That every poor person not of ability to sue, and who shall have cause of action against any person, shall have, by the discretion of the chancellor, writs original or writs of subpoena, without paying for the same; and if the suit is to be prosecuted in the court of chancery, the chancellor shall assign to such poor person solicitors and counsel, and all other officers requisite for prosecuting the suit, who shall do their duty therein without taking any reward for the same; and if such action is to be prosecuted in any other court, the judges thereof shall, by their discretion, assign to such poor person attorneys and counsel, and all other officers requisite for prosecuting the suit, who shall do their duty therein without taking any reward for the same, and in case any such plaintiff be non-suited, or a verdict or judgment be given against him, he shall not be compelled to pay any costs in such action.

XXII. *And be it further enacted*, That all actions of trespass *quare clausum fregit*, wherein the defendant shall disclaim in his plea or in his notice with the general issue, any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant shall be admitted to plead or give notice with the general issue of a disclaimer, and that the trespass was by negligence or involuntary, and a tender of sufficient amends for such trespass before the action brought, whereupon, or upon some of them, if the defendant pleads specially, the plaintiff shall join issue, and if any issue to be joined as aforesaid, shall be found for the defendant, or the plaintiff shall be non-suited, the plaintiff shall be barred from the said action, and all other suits concerning the same.

XXIII. *And be it further enacted*, That no dilatory plea shall be received in any court of record unless the party offering such plea do, by affidavit, prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true. X

XX V. *And be it further enacted*, That no *essoins* shall be allowed in any suit, and no person shall be permit-

{X 62-- same words as 2704 Ann. c. 16 f. 4.

ted to wage his law in any case, except that of *non summons* in real actions.*

K&R. v. 1. 387
§ 24

XXV. *And be it further enacted*, That all grants and conveyances made since the eighth day of March, one thousand seven hundred and seventy-three, or hereafter to be made, by fine or otherwise, of any lands, or tenements, or rents issuing therefrom, or, of the reversion, or remainder, of any lands, or tenements, shall be valid, without any attornment of the tenants of any such lands or tenements: *Provided however*, That no such tenant shall be prejudiced by payment of any rent to any such grantor or cognizor, or by breach of any condition for non-payment of rent, before notice given to him of such grant or conveyance.

Grants of land valid without attornment.
K&R. v. 1. 387
§ 25
4 Ann. c. 16
11 Geo. 2. c. 18.
Proviso.

XXVI. *And be it further enacted*, That all warranties made since the eighth day of March, one thousand seven hundred and seventy-three, or hereafter to be made by any tenant for life, of any lands, tenements, or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void; and all collateral warranties which have been made since the day and year aforesaid, or hereafter to be made, of any lands, tenements, or hereditaments, by any ancestor who had no estate of inheritance in possession in the same, at the time of making such warranty, shall be void against his heirs.

Warranties by tenants for life void
K&R. v. 1. 388
§ 26
References supra.
Collateral warranties by ancestor, etc. when void.
4 Ann. c. 16

XXVII. *And be it further enacted*, That every foreman of a grand-jury shall be, from the time of his being appointed until his discharge, authorised to administer the usual oath or affirmation to such witnesses as shall come to give evidence to the grand-jury whereof he is foreman.

Foreman of grand-jury may administer oaths.
K&R. v. 1. 389
§ 27

XXVIII. *And be it further enacted*, That any person who shall wilfully commit trespass, by cutting down or destroying any kind of wood, or timber, standing, or growing, upon the lands of the people of this state, or of any person or persons whatsoever, or shall wilfully commit trespass, by carrying away any kind of wood or timber, which may be lying upon such lands, or shall wilfully and maliciously cut down, lop, girdle, bark or injure any orchard, or fruit tree, or trees, without the consent of the owner or owners of the land whereon such orchard fruit tree, or trees was, or were standing or growing, shall be deemed guilty of a misdemeanor, and being convicted thereof by due course of law, shall be punished by fine, or imprisonment, at the discretion of the court before which such conviction shall be had: *Provided always*, That no person, so convicted by virtue of this act, shall be imprisoned for a longer term of time than one year, or fined in a sum exceeding fifty dollars.

Certain trespasses punishable by fine and imprisonment.
Stat. 34. c. 238
§ 2
20 H. 3. c. 11.
3 Ed. 1. c. 20

XXIX. *And be it further enacted*, That if any person or persons shall cut any wood, underwood, trees, or timber, or shall girdle, or otherwise despoil any fruit trees on land, the title

Proviso.

Treble damages allowed against certain trespassers on lands.

* English statutes, as to *Fessins*. *St. Marl.* 52 H. 3. c. 13, 20. *St. Westm.* 1. 3 Ed. 1. c. 42, 43, 44. *St. Westm.* 2. 13 Ed. 1. c. 28. *St. Glouc.* 6 Ed. 1. c. 8, 10. *St. Wall.* 12 Ed. 1. 13 Ed. 1. c. 12, 17, 27. 12 Ed. 2. st. 2. 5 Ed. 3. c. 6. 9 Ed. 3. st. 1. c. 3. *St. de viem. &c. incerti temp.* 1 vol. Ruffh. English statutes at large, p. 188. English statutes as to *wager of law*. *M. C.* 9. H. 3. c. 28. *St. Wall.* 12 Ed. 1. c. 38 Ed. 3. st. 1. c. 5. 6 R. 2. st. 2. c. 5. 5 H. 4. c. 8. 34&35 H. 8. c. 26. sec. 74.

W. v. 4. 247
 Rev. 20. c. 94
 Br. ed. 31, 32
 37. c. 1. 8. c. 6
 8 John. Rep.
 243.

whereof is in the people of this state, such person or persons, not being actual settlers on such land, or on the commons of any city or town, he or they having no right or privilege in such commons, and not having obtained license from the corporation, or trustees, of such city or town, or on any other land, without the leave or permission of the owner or owners thereof, or shall in like manner, carry off any wood, underwood, trees, or timber, from the same, such person or persons shall pay to the owner or owners of such land, treble the value of the wood, underwood, trees, or timber, cut or carried off, as aforesaid, to be recovered with costs, in an action of trespass, before any court, having cognizance of the same, by the owner or owners of the land, on which such trespass shall have been committed, or if such trespass shall be committed on the commons of any city or town, then by the corporation of the city, or by the trustees of the town to which such commons shall belong; but if such land shall belong to the people of this state, then by the overseers of the poor of the town in which such trespass or trespasses shall be committed, for the use of the poor thereof; *Provided always*, That if upon the trial of any action of trespass, for cutting down, destroying, or carrying away, any trees, timber, or underwood, it shall appear by evidence, that the trespass was casual and involuntary, or that the defendant had probable cause to believe, that the land on which the trees, timber, or underwood, so cut, destroyed and carried away, were his own, in such case the court, having cognizance of the cause, shall give judgment for the plaintiff, to recover single damages only, and costs of suit: *Provided also*, That nothing herein contained shall authorize any person to recover more than the just value of any timber taken for the making or repairing any public roads or bridges, with costs.

Polio.

Further provision.

Attaints on untrue verdicts abolished: *Ex. R. v. 1. 358 § 28*
 English statutes not laws of this state.
 When a trial may be had in a foreign country.

XXX. *And be it further enacted*, That attaints upon untrue verdicts shall be abolished: *And further*, That none of the statutes of England or Great-Britain shall be considered as laws of this state.*

XXXI. *And be it further enacted*, That in case any issue or issues are, or shall be joined, which are by law local and require trial in any of the new counties wherein the supreme court

* The statutes of England and Great-Britain ceased to be the laws of this state on the 1st May, 1788. *Vide* Gr. v. 2. 616, § 37. Till that period, such as composed the law of the Colony on the 19th April, 1775, were in force in this state. *Vide* Constitution of the state, art. XXXV. It is not unworthy of remark, that none of the statutes of *Mortmain* were adopted in this state, and of course they cannot now be considered the law of this state. The English statutes of *Mortmain* are, 9 H. 3. c. 36. 7 Ed. 1. st. 2. 13 Ed. 1. c. 32. 18 Ed. 1. st. 1. c. 3. 15 R. 2. c. 5. 27 Ed. 1. st. 2. 34 E. 1. st. 3. 18 Ed. 3. st. 3. c. 3. 23 H. 8. c. 10. 1 & 2 Ph. & M. c. 8. 35 E. 1. c. 7. 39 E. 1. c. 5. 17 Car. 2. c. 3. 22 Car. 2. c. 6. 7 & 8 W. 3. c. 37. 9 Geo. 2. c. 36. &c. How far any of the provisions in the statutes of *Mortmain* are applicable to this state, is a question, neither necessary nor proper, here to discuss.

English statutes, relative to *attaints*. *St. Westminster*. 1. 3 Ed. 1. c. 38. 34 Ed. 3. c. 7. 13 Ed. 1. c. 30. *St. de Vico*. 14 Ed. 2. 1 E. 1. 3. st. 1. c. 6. 5 Ed. 3. c. 6, 7. 28 Ed. 3. c. 8. 34 Ed. 3. c. 7. 9 R. 2. c. 3. 13 R. 2. st. 1. c. 18. 3 H. 5. st. 2. c. 5. 11 H. 6. c. 4. 15 H. 6. c. 5. 18 H. 7. c. 21, 24. 19 H. 7. c. 3. 23 H. 8. c. 3. 37 H. 8. c. 5.

have not yet appointed circuit courts, it shall be lawful for the supreme court, on the application of either of the parties, on due notice being given, to make order for the trial of any such issue or issues, in some adjoining county, and such trial shall be as available, as if had in the county in which the venues are laid.

XXXII. *And be it further enacted*, That all private acts passed, or to be passed, by the legislature, and printed by the printer of the state, shall and may be read in evidence in all cases, and in all courts in this state, from the printed statute book, any law or usage to the contrary notwithstanding.

XXXIII. *And be it further enacted*, That it shall and may be lawful for any person or persons seized of an estate in remainder or reversion, to maintain an action of waste or trespass for any injury done to the inheritance, notwithstanding any intervening estate for life or for years.

XXXIV. *And be it further enacted*, That no female person shall be imprisoned upon execution, in any civil action for debt or damages hereafter to be brought in any court whatsoever, in which the debt or damages recovered shall not, exclusive of costs, amount to more than fifty dollars.

XXXV. *And be it further enacted*, That all copies of records and papers in the office of the secretary of this state, certified by the secretary, or his deputy, and authenticated under the seal of office of the said secretary, shall in all cases be evidence equally and in like manner as the original; and the same fees shall be taken for such copies as are now allowed for acts authenticated under the great seal of this state, and shall be accounted for in the manner now prescribed by law.

The statute book printed by the printer to the state, evidence of private acts. Sess. 34. ch. 246. § 40.

Waste and trespass maintainable by the reversioner or remainder man. Sess. 34. ch. 246. § 47.

Females not to be imprisoned for debts unless they exceed 50 dollars. Sess. 34. ch. 248. § 18.

Copies of records from the office of the secretary of state, certified under the seal of said office good evidence in courts. W v A, 304 Sess. 35. c. 145. § 1.

CHAP. II.—(R.L.)

An ACT for the Support of Government.

Passed February 17, 1813.

[K. & B. v. 1. 532.—Sess. 25. c. 119—Sess. 27, c. 109—Sess. 28, c. 135—Sess. 29, c. 176—Sess. 33, c. 193—Sess. 34, c. 246, 82—Sess. 35, c. 232]

1, *Be it enacted by the people of the state of New-York, represented in Senate and Assembly*, That there shall be allowed to the several officers of government hereinafter mentioned, the following annual salaries: To the person administering the government of this state, the sum of five thousand dollars; to the chancellor, the sum of three thousand five hundred dollars; to the chief justice, the sum of three thousand five hundred dollars; and to each of the other four judges of the supreme court, the sum of three thousand five hundred dollars; but this provision shall not be construed to extend to any judges of the said court that may be appointed after their number shall amount to five, nor to authorise the increase of such number without special legislative provision for the purpose; to the treasurer, the sum of one thousand seven hundred and fifty dollars, in full for his services and expenses; to

Salaries allowed to

the governor, chancellor, chief justice and the other judges. [These officers created by the constitution, art. XVII, XXII, and XXV.]

Treasurer.

Treasurer's clerk.
Secretary of state.
[Office recognized March 16, 1777.—Gr. v. 1. 17]
Surveyor-General.
[Office first created March 20, 1781.—vide Gr. v. 1. 48]
Attorney-General.
[Office recognized in 1778.
Gr. v. 1. 36]
Judge of probates.
[Office recognized by the constitution, and instituted March 16, 1778—vide Gr. v. 1. 8]

Comptroller to issue his warrant for same.
[Office of comptroller first created Feb. 9, 1797, in place of auditor.—vide Gr. v. 3. 80. The office of auditor was first created March 21, 1781.—vide Gr. v. 1. 45—Before which time, there existed the office of auditor general—vide Gr. v. 1. 45—preamble.]

Chancellor and judges to have no fees for services as such.

Compensation to the president of the senate, speaker of the assembly, senators and members of assembly.

the clerk of the treasurer, for his services, the sum of five hundred dollars; to the secretary of this state, the sum of two thousand dollars; to the surveyor-general, the sum of two thousand dollars: *Provided nevertheless*, That the said surveyor-general shall account with the comptroller of this state, and pay into the treasury all the fees he may have received or shall receive by virtue of his said office; to the attorney-general, the sum of two thousand dollars; to the private secretary of the person administering the government of this state, the sum of six hundred and twenty-five dollars; and to the judge of the court of probates, the sum of five hundred dollars; and the said annual salaries shall be payable in equal quarterly payments at the treasury, by the treasurer, on the warrant of the comptroller, on the first days of April, July, October and January, in every year, and shall be computed as becoming due to the said several officers, in proportion to the times for which they shall hold their respective offices; and the said annual sums to the treasurer, may be retained by him in quarterly payments as aforesaid, on the warrant of the comptroller; and the comptroller shall issue his warrant to the treasurer, to pay the said annual sums in quarterly payments aforesaid, upon the receipt of a certificate signed by the person administering the government of this state, and under the privy seal of the state, certifying that at the time when the last quarterly payment became due, the person or persons in whose favor the certificate may be given, held the said office or offices for which such person or persons may demand a compensation; and if any person shall cease to hold any of the said offices at any time between the times above prescribed for quarterly payments, such certificates shall specify the time when he ceased to hold such office; but no such certificate shall be necessary for the person administering the government of this state, and the comptroller shall draw his warrant for such sums as shall become due to him as aforesaid, without any certificate.

II. *And be it further enacted*, That it shall not be lawful for the chancellor or judges of the supreme court, to demand or receive any fees or perquisites for any thing done by either of them in virtue of their offices.

III. *And be it further enacted*, That at every session of the legislature, the president of the senate, and speaker of the assembly, shall each be entitled to receive five dollars and seventy-five cents for every day he shall attend in his station, and that each member of the senate and assembly, shall be entitled to receive four dollars for every day he shall attend either of the said houses respectively, and the like compensation to the president of the senate, the speaker of the assembly, and to the other members of the legislature, for every twenty miles of the distance from the place of his residence, to the place of the meeting of the legislature; and such distance shall be estimated by the most usual road, and shall be computed both for the travelling to, and returning from, the place of their said meeting; and if any member of the senate or assembly shall, after his arrival at the place of their said meeting, be prevented by sickness from attending either of the said houses respectively, he shall be entitled to the like daily allowance as aforesaid, for every day he shall be so pre-

vented; and the comptroller shall issue his warrant to the treasurer, for the payment of such sum as may so become due to each member respectively, upon the receipt of a certificate signed by the president of the senate, or the speaker of the assembly, as the case may be, setting forth the number of days that the member in whose favor it shall be given, may have attended either house respectively, and the estimated distance of his place of residence from the place of the meeting of the legislature.

IV. *And be it further enacted,* That there shall be allowed and paid to each of the clerks of the senate and assembly, the sum of six dollars per day for their respective services, together with the additional sum of three dollars and fifty cents per day for an assistant clerk during the session of the legislature; and also the amount of such sums for the contingent expenses of the two houses as may from time to time, during the sessions of the legislature, be certified to be necessary, by the president of the senate and speaker of the assembly respectively, and also for engrossing each sheet or folio of seventy-two words, twelve and an half cents, and six and an half cents per folio, of seventy-two words, for copying the journals for the governor, resolutions to either house for concurrence, and copies furnished the state printers, and for issuing notices of vacancies in the senate, as directed by law, fifty cents; and such accounts, with the vouchers for the same, shall be audited and allowed by the comptroller; and there shall also be allowed and paid to the serjeant at arms, and the door-keepers of the senate and assembly, each the sum of three dollars and fifty cents for every day they shall attend the legislature agreeably to such certificate thereof as they shall respectively produce, certified by the president of the senate or speaker of the assembly; and there shall also be allowed to the messenger and door-keeper of the council of revision and council of appointment, the sum of three dollars and fifty cents per day, for each day they shall attend the said councils respectively, for the payment of which several compensations and sums of money, the comptroller shall issue his warrant to the treasurer after the same are allowed and certified as aforesaid.

Compensation to clerks and assistant clerk of the senate and assembly, serjeant at arms, door keepers, etc.

V. *And be it further enacted,* That the members of the Council of Appointment, for each day of their attendance in council, during the recess of the legislature, and for travelling from and to their respective places of residence, shall be entitled to the like compensation as hath been before prescribed for the members of the legislature; and the comptroller shall issue his warrant to the treasurer for the payment of the sums that may so become due to them respectively, upon the receipt of a certificate signed by the person administering the government of this state, setting forth the number of days that they may have severally attended in council, and the distance of their several places of residence from the place of their meeting, and the sums due to them severally on that account.

Compensation to the council of appointment, when convened during the recess of the legislature.

VI. *And be it further enacted,* That the comptroller shall, quarter yearly, issue his warrant to the treasurer, for payment to the secretary of this state, of the amount of the necessary expenses of his office, to be audited by the comptroller: *Provided,* They do not exceed, in any one year, the sum of one thousand five

Expenses of the office of sec. of state how paid, and to continue in Albany.

hundred and fifty dollars; and the office of the said secretary shall continue to be kept and held in the public building erected for that purpose in the city of Albany.

Sec. of state
to receive and
keep an ac-
count of the
fees received
in his office.

VII. *And be it further enacted*, That the said secretary shall continue to receive all such fees as he is or shall from time to time, be by law permitted to take, and shall keep an account thereof, and shall exhibit such account quarterly to the comptroller of this state, who having examined and filed the same in his office, shall certify to the treasurer the amount thereof, and the said secretary shall pay the same to the treasurer: *Provided*, That no fee shall be taken for any civil or military commission whatever.

Monies herein
directed to be
paid, payable
out of the re-
venue of the
state.

VIII. *And be it further enacted*, That the sums herein before directed to be paid, shall be payable out of any revenue arising or to arise from any monies loaned by this state, or from any revenue arising to the people of this state, in any manner whatever; and the said revenue, or so much thereof as shall be necessary for that purpose, is hereby appropriated for paying the several sums of money by this act directed to be paid.

Clerks of
counties to be
paid certain
sums.

IX. *And be it further enacted*, That the treasurer shall, from time to time, pay to the clerks of the respective counties in this state, such sums of money as shall be certified by the comptroller to be due to them, for registering or recording any mortgage to the people of this state in behalf of this state, and for their services and expenses in performing the duties required of them by the act, entitled "an act concerning oaths."

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